

Response ID ANON-Z1FZ-UJYY-V

Submitted to National Care Service (Scotland) Bill (Detailed)

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About you

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I would like my response to be published in its entirety

What is your name?

Name:

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Are you responding as an individual or on behalf of an organisation?

Organisation

Organisation :

Scottish Care

Please tell us a little more about your connection to care services. Which of the following options best describes you. (Tick all that apply)

Other (please specify in the box below)

If you selected 'Other' please provide more information in the box provided.:

Membership organisation & representative body for independent sector social care services

Would you like to be involved in future engagement work?

Yes, I would like to be involved in future engagement work and agreed to be contacted by the Committee in the future.

Organisation details

What is your job role?

Please provide answer in box provided:

Policy & Research Manager

Information about your organisation

Please add information about your organisation in the box below:

Scottish Care is a membership organisation and the representative body for independent sector social care services in Scotland. We represent over 400 organisations, which totals almost 1000 individual services, delivering residential care, nursing care, day care, care at home and housing support services. Our membership includes organisations of varying types and sizes, amongst them single providers, small and medium sized groups, national providers, employee-owned and family run services. Our members deliver a wide range of registered services for older people as well as those with long term conditions, learning disabilities, physical disabilities, dementia or mental health problems.

Working on behalf of a range of providers, Scottish Care speaks with a single unified voice for both members and the whole independent care sector. This includes staff working in and those who access independent sector care services. For the purposes of clarity and understanding, the independent sector covers private, charitable, not for profit and employee-owned social care organisations.

In Scotland, the independent social care sector across day care, care home, care at home and housing support services for adults contributes to:

- The employment of 100,590 people, which is over 48% of the total social services workforce, including over 4,000 nurses

- The provision of 90% of care home places for older people
- The delivery of over 55% of all home care support hours provided to adults

Any night of the year, there are over 33,000 adults in care homes across Scotland, 62% of whom will require nursing care and 59% of whom will have a form of dementia (this number is higher amongst older people). In 2020/21, 44,000 people received funding towards a long stay care home place. This is compared to an average of just over 13,000 available staffed beds for all acute specialities in the NHS in Scotland.

Nearly 68,000 adults received home care support in the last financial quarter of 2020/21, which totals almost 9.2 million hours of care delivered during this quarter. The independent sector contributed to the support of 37,905 of these clients.

Scottish Care is committed to supporting a quality orientated, independent sector that offers real choice and value for money. Our aim is to create an environment in which care providers can continue to deliver and develop the high quality care that communities and citizens require and deserve. We welcome opportunities for dialogue, discussion, collaboration and partnership with any and all who share our values.

General questions about the Bill

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.:

At this stage, we are unable to say whether the Bill will be successful in improving the quality and consistency of social work and social care in Scotland. Whilst the limited detail it provides is largely intentional - in order to be informed by co-design work - this leaves a significant information gap which creates considerable uncertainty around many elements of the National Care Service (NCS) as it is described within the Bill.

Scottish Care welcomes the positive potential offered by future co-design work as a mechanism for shaping the details of the Bill and the National Care Service, based on the diverse personal and professional perspectives and experiences of citizens. However, the current reality is that Scottish Care's membership (comprised on independent sector social care providers) are struggling to welcome the Bill in its current form and to have confidence that it can achieve its intended purpose because of the lack of detail provided, particularly around what impact it will have in practice. 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.

Our members have particularly reflected an inability to identify a meaningful vision and approach that underpins the Bill, with some stating that even elements which appear positive within the Bill at this stage could look quite dramatically different in practice - again, because of the lack of detail available. There is also a fear that aspects that should serve to improve outcomes for people and be citizen-led could become unhelpfully politicised. This lack of trust is particularly problematic given that the development of the National Care Service needs to be predicated on partnership, consensus and confidence in the vision.

Whilst Scottish Care and its members are committed to playing a constructive and creative part in the creation of a National Care Service for Scotland, we are not assured that the Bill and indeed the creation of a NCS will inevitably improve the quality and consistency of social care. The building of this confidence will be premised on significantly more information and meaningful opportunities for those within the sector to shape the particularities, before translating these into practice.

What's more, the Bill as it stands largely focuses on structures, processes and national establishment and running details. It points to the development of a service which in many ways appears to seek to mirror elements of the National Health Service. Scottish Care is clear that we cannot just build the future NCS on the experience of yesterday. This once in a lifetime opportunity requires to be far more visionary and broader in scope than that. Our concern is that from current reading of the Bill, it signifies the creation of a reactive, emergency NCS based on a similar structure to the NHS rather than recognising the truly social, relational and dynamic strengths of social care.

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 in reality for different stakeholders. This direction largely seems under-developed 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, the role of other crucial contributors such as social care providers - who will be instrumental in achieving the purpose - remains unclear and needs to be more explicitly acknowledged on the face of the Bill.

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.:

We believe the Bill forms an important part of significant systemic change and presents an important and exciting opportunity to make the changes required around governance, accountability, resourcing and partnership in 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. As outlined above, we do not believe it has reached its potential in achieving this at this stage.

The National Care Service cannot simply be the National Health Service for social care and with the Bill serving as the only tangible public representation of current ambitions for the NCS, our concerns around this are raised. Social care has value and importance in its own right not just as an adjunct to acute health care. As Scottish Care's Coileanadh report 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 Bill can serve to reflect the radical, citizen-led approach required to make the NCS a meaningful success but would require significant changes from its current form for this to happen.

Significant interventions must also be made sooner than the timeline for implementation of the National Care Service if there is to be a social care sector at all from which to build further quality and consistency into. 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, and is being further compounded by the current cost of living crisis and acute sustainability challenges.

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 the issues come down to the insufficient valuing of and investment in social care. Scottish Care - along with Oxfam Scotland, Carers Scotland, One Parent Families Scotland and the Scottish Women's Budget Group - is leading a campaign for a new National Outcome on care to be placed within an improved National Performance Framework (NPF) - 'A Scotland that cares'. This will put care at the heart of the Scottish Government's vision for Scotland and help ensure we fully value and invest in all forms of care and all those who provide and experience it. A dedicated National Outcome on care will set a path towards ongoing and transformative change, and its introduction would place Scotland among the first countries in the world to make such an explicit commitment. Critically, it will enable us to meaningfully and transparently measure the progress achieved over time, using robust and cross-cutting indicators. We believe this represents another crucial medium-long term approach for reforming care quality, consistency and value and therefore National Care Service planning and implementation should tie in effectively with this.

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.:

There are a number of areas of the Bill that we believe require amendment or more detailed consideration as to their impact and meaning. These are reflected in our further response to the consultation questions.

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.:

As an organisation which grounds itself in human rights and strongly advocates for the protection and promotion of human rights throughout social care, Scottish Care has been encouraged by public statements and documentation around the National Care Service that it would prioritise a human rights-based approach. However, we believe a stronger emphasis on human rights is required within the Bill and that human rights need to be more consistently reflected throughout all sections of it.

Social care in Scotland has seen a number of legislative changes and significant policy developments in recent years. These have sought to significantly reform how social care is planned and provided and despite a number of challenges related to implementation, in principle have been at the forefront of global progressive thinking regarding human rights and social care. These include the Social Care (Self-directed Support) (Scotland) Act 2013 which empowered citizens to have control over their care and support, and the Public Bodies (Joint Working) (Scotland) Act 2014 which laid the foundations for integrated health and social care services. The National Care Service (Scotland) Bill is significantly lacking in its connectedness and coherence with these other pieces of legislation and both need to be better reflected on the face of the Bill and throughout its detail. In progressing social care reform, it is important that lessons are learned from existing work including positive examples of legislation in practice. It is therefore essential that this Bill doesn't dismiss or omit learning from what has gone before and must consider how the National Care Service can serve as a vehicle for further embedding progressive policy in practice.

Future secondary legislation

Please provide your response in the box provided:

As outlined previously, whilst co-design is important we believe that too many details are proposed to be left to secondary legislation and related co-design processes without sufficient direction.

In terms of how secondary legislation will be shaped, to our knowledge there are currently over 70 working groups attached to NCS development yet there remain significant representation and knowledge gaps particularly in relation to care home and homecare provision. Consideration must therefore be given about how to improve communication, inclusion and education throughout development of the legislation and associated policy.

We share the views of the ALLIANCE in terms of the need for important areas such as fair work, the right to food and care charging to be addressed through secondary legislation.

Transfer of services to the National Care Service

Please provide your response in the box provided:

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.:

One of our main concerns is that the National Care Service Bill and accompanying documentation, as it stands, appears to be lacking in ambition and scope to deliver the radical transformations required to address the severe financial shortfalls impacting the social care sector.

For example, reference to continued market shaping to ensure the sector 'remains vibrant and stable' doesn't address how the extreme shortfalls in funding and ineffective existing approaches to market shaping based on driving down costs have already completely destabilised the sector.

We believe there to be insufficient acknowledgement at present of the economic contribution of social care, including that provided by non-statutory sectors, and the need to better invest and value it as highlighted by the Independent Review of Adult Social Care and as called for by the 'A Scotland that cares' campaign. We want to see better recognition and incorporation of what is known already about the financial challenges and barriers within the sector, such as approaches to commissioning homecare and care home provision that are not fit for purpose.

We also believe that other essential supports within social care need to be built into planning and financing and as such, we also support calls from the Scottish Partnership for Palliative Care for new market oversight and commissioning arrangements to ensure the financial sustainability of hospice provision. In the absence of hospice-provided services (which the public helps fund through donations) the State would face a substantial bill to fill the gap. As organisations which provide leadership, innovation, education and advice/support around death, dying and bereavement, hospices should be engaged as key partners in strategic commissioning processes.

Impact assessments

Please provide your response in the box provided.:

Questions about the Financial Memorandum

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.:

Scottish Care responded in full to the 2021 consultation on the National Care Service and throughout our submission, we highlighted essential considerations relating to finance and resourcing of the social care sector. These included:

- The need to identify and develop practical measures and resources to support the full implementation of SDS in all contexts, through which barriers to real citizen choice and control can be addressed as part of the National Care Service.
- The requirement for the National Care Service to address the competitive model currently in place for social care commissioning which in homecare, has driven prices down and in care homes, has resulted in a failed Cost of Care Model where local authorities end up spending twice as much for in-house services. Both result in waste by creating an unstable market and disrupt continuity of care and support.
- A more responsive approach to commissioning beyond purely a cost basis, reflective of the modern realities of social care provision to enable more small scale, bespoke and person-led delivery of support. This would also support specific and specialist provision, for instance in relation to palliative and end of life care or older people's mental health, to be planned for and developed at local level informed by the needs of communities.
- Rebalancing of commissioning processes in ways that better support, sustain, and develop the workforce, including through the resourcing of learning opportunities.
- The requirement to instigate a national dialogue on how a society with an ageing population and a declining workforce is able to pay for the social care it wants, requires and deserves. The NCS must articulate a clear and fair position on the issue of return within social care in a way that ensures investment in and sustainability of high-quality services whilst addressing concerns, regardless of provider, of inefficiency, value for money and profiteering.
- Addressing the fundamental inequalities inherent in the funding of social care compared to funding of the NHS. Whilst direct ministerial accountability will assist this it may not address it in its entirety. The current system sets out to deliver what people want, but only provides funds based on what is deemed affordable, without effective routes to challenge inadequate funding or adjust service delivery in an equitable way. We recommended a rigorous and independent review of the true costs of care in both residential and nursing homes and in home care services in the community.
- Underpinning of the National Care Service by a human-rights based approach to both national and local resource allocation and budgeting, which supports the identification of resources to fully enable the realisation of citizens' rights. These rights extend beyond specific care needs to the support of positive mental health and general wellbeing, which requires further prioritisation and resource allocation.

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.:

We do not believe that these important elements of any future National Care Service have been sufficiently reflected in the financial memorandum or the Bill. The radical transformations to investment, commissioning, priority setting and value that are required remain absent or lacking in any detail.

Did you have sufficient time to contribute to the consultation exercise?

No

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. :

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. There is an almost exclusive focus within the FM on national establishment and running costs without the required attention given to how the inherent and historic underfunding of social care will be counteracted. Considerably more detail must be provided as to how non-statutory partners in the independent and third sectors will be supported and resourced appropriately to play a full and active role in achieving the National Care Service's vision.

It is of concern that the FM notes:

"56. 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."i

We believe this to be entirely untrue in reality and the failure to recognise these sectors as being part of the significant changes planned points to a wider lack of understanding or recognition about their contribution to social care, to Scotland's economy and to the wellbeing of citizens. This section does not even name the independent sector at all, which again reinforces Scottish Care members' lack of confidence in the Bill's objectives.

Even what is mentioned within the Bill – such as achieving fair work practices, changes to data sharing, ensuring financial stability, implementing Anne's Law – will have sizeable resource implications for providers across all sectors and that is not reflected in the cost estimations. This is a major oversight.

The Bill and accompanying memorandums note throughout the importance of designing and consulting with people who access services, yet does not recognise that the independent and third sector supports 67% of all those to whom residential and homecare support is provided. These are the very people who need to be enabled and empowered to contribute meaningfully to all aspects of design and delivery and inevitably, resource is needed to facilitate this.

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. :

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. :

National Care Service principles (Section 1)

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

Use text box provided:

Scottish Care is broadly supportive of the National Care Service principles and is pleased to see a focus on human rights but what these mean in practice and how they are reflected in shaping approaches, for instance in relation to ethical commissioning, is of greatest importance.

There are many positive ambitions reflected within the principles, however brief mention of terms that require a much wider, embedded and holistic approach to realise them will be insufficient in isolation in effecting change.

We would suggest a number of changes to the current principles to ensure they truly reflect the approach required. These changes are:

- Human rights need to be strengthened within the principles and throughout the Bill in order to signal their true embeddedness. We would suggest a more comprehensive definition of human rights is incorporated, such as those contained within various international human rights conventions. We would also recommend our work on 'A Human Right to Social Care' (2021) as a useful reference point in aligning human rights within a social care context, including the elements that comprise a 'social model of social care'. Consideration must also be given to how human rights awareness and education will be mainstreamed and resourced throughout the National Care Service.

- The principle relating to financial stability of the National Care Service does not provide sufficient assurance or detail about how market stability, resource allocation, human rights budgeting, value and investment will be secured, supported equally across services, monitored and actioned if not achieved. Financial stability is not about maintaining provision at the lowest cost but about enabling services to develop, innovate and respond to national and local need, and there requires to be clear lines of accountability for achieving this. Given the existing financial instability within the social care sector, particularly for commissioned services in the independent and third sectors, and the need for the National Care Service to fundamentally address this, this section must be strengthened.

- Principle C needs to be centred on achieving the best outcomes for people and at present, it reads as focused on reducing service demand. This is particularly problematic where it cites 'early interventions that...reduce care needs'. It should be recognised that proactive and preventative approaches to care and support are crucial but do not inevitably result in a person needing less support. It may be that the support a person requires is different and possibly less intensive but the focus should be on ensuring people get the support they want and need, when they want and need it. Social care goes

beyond physical interventions but is about supporting someone's wellness and wellbeing in its fullest sense. To assume or plan services with the motivation of requiring less care provision is unhelpful.

- Principle D must incorporate a broader, more inclusive approach to co-design by extending collaboration to those who work in care services and those who provide them.

- Principle G, in a similar vein to human rights, needs to reflect a meaningful strategy for realising fair work practices and be reinforced by actions and approaches that will deliver this. Whilst its inclusion is welcome, we are not persuaded that mention in the principles will be sufficient to deliver this in practice.

Accountability to Scottish Ministers (Sections 2 and 3)

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

Text box provided below:

It is hoped that creating Ministerial accountability for social care will remove some of the current barriers to addressing challenges and effecting change, not least in relation to resource allocation and existing inequitable funding. However, it will be important that there is also a duty on Scottish Ministers with these responsibilities to ensure they are suitably informed and aware of the realities and intricacies of social care in a way that we are not convinced exists currently in any consistent way. We would strongly recommend that obligations are built into Ministerial duties to, at a minimum, require them to visit and engage with cross-sector services, providers, the workforce and those who access care and support on a regular basis in order that their knowledge base is strengthened and decisions are experience-led.

Establishment and abolition of care boards (Sections 4 and 5 / Schedules 1 and 2)

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

use text box below:

The introduction of care boards and the intention for these to replace Integrated Joint Boards (IJBs) raises questions as to how they will operate differently and deliver the radical changes required. The experience of the independent sector in terms of inclusion and partnership through IJBs varies significantly and Scottish Care's members are concerned that these care boards will represent a similar postcode lottery of experience merely with a new name. For instance, there is no designation of providers and the independent sector as essential members of the care board and this is something that is a necessary amendment on the face of the Bill. The experience of Integrated Joint Boards is that this explicit designation is required for consistency and representation of such a large part of the social care sector, and that this requires to be on the basis of full membership including voting rights in order to achieve meaningful partnership and equality.

The planned name for these boards 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 and 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.

Scottish Care believes that many of the areas designated as for further consultation and co-design must instead be reflected within the Bill in order to provide the required detail, direction and consistency to inform further planning. This includes minimum membership of the boards and how they will work with key partners such as the independent sector, building on the learning from health and social care integration.

Strategic planning and ethical commissioning (Chapter 2)

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

use text box below:

There is very limited mention of inclusion and engagement with the independent sector, social care providers or the workforce in decision making or planning processes. The independent and third sectors need to be mentioned explicitly throughout the Bill as essential partners and contributors, including to strategic planning processes.

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.

National Care Service Charter (Sections 11 and 12)

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

Text box:

Scottish Care welcomes the inclusion of a Charter. 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.

However, details around accountability, monitoring and routes for redress are missing at present and need to be more clearly articulated in order for the Charter to operate as a means for supporting buy-in, partnership, trust, confidence and assurance in the National Care Service.

The co-design process of developing the Charter needs to also be more explicit in what it means by those with 'lived or living experience' and make this as inclusive as possible, extending to those with experience of providing and delivering care and support as well as those who may access it and their loved ones.

Complaints (Sections 14 and 15)

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

use text box:

We are unclear about the scope of the proposed new complaints service, including mention that this would extend beyond services provided by the National Care Service. Reform in this regard should be centred on removing unnecessary complexity or confusion in relation to navigating health and social care and this could potentially risk duplication, not least with the role of the Care Inspectorate in managing complaints. Therefore, more detail is sought regarding how this proposed service fits with existing routes for complaints and redress. As highlighted in our previous response, any new complaints system must enshrine and uphold access to human rights assurances and evidence person involvement, informed choice and agreement.

We welcome the role of a Commissioner but believe this should be a Social Care Commissioner, who incorporates the National Care Service within their responsibilities. The role of a commissioner should be more than simply handling complaints; they should be there in an independent capacity to advocate on behalf of those who use social care supports, and to hold all stakeholders to account for the delivery of a human-rights based social care system. This needs to be a distinct and independent role able to hold all stakeholders to account for the fulfilment of their obligations and duties.

Ministers' powers to intervene (Chapter 4)

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

text box:

Related to previous comments regarding Ministerial responsibilities, we would seek further clarity regarding:

- The scope of interventions and more detail around what circumstances these might be used.
- Assurances that appropriate knowledge and intelligence exists to inform an intervention in order that it is appropriate, contextualised and justified.
- Consideration of the impact on people of service failures and associated interventions, adopting a human-rights based approach in order to place the needs, dignity and choice of individuals at the centre of decision-making.

Connected functions (research, training, other activities and compulsory purchase (Chapter 5)

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

text box below:

We would wish to see the need for evidence and monitoring built into these functions in order that decisions made about each of these contributes to the National Care Service principles and furthers the vision, including how they advance human rights, represent equality of access and opportunity across sectors and are joined up with existing policy and practice.

Transfer of functions, including scope of services (Chapter 6 and Schedule 3)

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

text box:

It is critical that the creation of a National Care Service doesn't, by design or default, result in the creation of one enormous statutory body. The strength of social care is in its dynamism and diversity of provision, giving individuals choice and control relative to their wishes, circumstances and needs. Whilst consistency and standardised conditions are desirable, a homogenised National Care Service is not and would remove the responsiveness and innovation that social care provision in all its forms offers.

We are also concerned that plans to move local authority staff into care boards and retain a commissioner/commissioned relationship with other non-statutory partners suggests a continued unhelpful sense of 'us and them' without real appreciation of or equality across all social care partners. This would represent a challenge in achieving fair work conditions and parity within the workforce.

Health and social care information (Part 2)

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

text box:

The introduction of a consistent and accessible electronic care record could be a useful mechanism for addressing the wide calls to remove duplication of information requests, poor data sharing and missed opportunities for integrated and informed intervention. However, it is important that such a record is not only a single repository but that it prioritises citizen control of their own data in a rights-based way. This would optimise the delivery of person-led care and support at the point of access, as well as future-proof the model by enabling connectivity with new systems as technology evolves.

Work on the development of data and information sharing standards must incorporate existing learning from the sector and providers. This involves data standards that meet and work with General Data Protection Regulation (GDPR) and is not a replication of TURAS; social care is human and person-centred, and we need to make sure that additional work is not created for providers. Involving all interfaces of health and social care provision will ensure that what is developed is fit for purpose. Social care is an intervention grounded in human rights and the way that we collect, hold, and use data in the sector should also align to this paradigm.

It is also essential that the proposed electronic care record truly enables appropriate information sharing, including with non-statutory partners such as the independent sector. At present, it does not stipulate the independent and third sectors as having access to the electronic record and this needs to be amended. These providers and workforce play a key role in both contributing and using information and data to inform and direct care appropriately and need to be treated as equal partners in this regard.

Technology needs to provide flexibility and options within social care settings to allow for consistency and choice and empower the experiences of people who access care and support. All of this needs to be within a robust ethical and human rights framework which enhances the autonomy, control, privacy and ability to make informed choices for the individual who uses social care supports. The Bill needs to be strengthened to incorporate an ethical and human rights framework for data and technology, building on the learning from Scottish Care and other's work. In 2021, in partnership with the ALLIANCE and Voices of eXperience (VOX) Scottish Care co-designed six principles for a human rights-based approach to digital in health and social care. These should be incorporated into this section of the Bill and are as follows:

- People at the centre. People should have access to inclusive and flexible digital services that meet their needs, rights, preferences and choices, with support if appropriate. Digital services should be focused on the best outcomes for the person, not the needs of the service or the health and social care system.
- Digital where it is best suited. People should be involved in deciding how, where and when digital is used in health and social care, and co-create rights based digital services to ensure they are appropriate and effective. Digital services are not always appropriate and should not automatically be the default health and social care service.
- Digital as a choice. People should be able to make an informed choice between using digital or non-digital health and social care services – and to switch between them at any time – without compromising the quality of care they experience. People should be fully involved in decisions made about their care. This should include information about any digital options being considered, and the non-digital alternatives.
- Digital inclusion, not just widening access. People should have access to free training and support to develop the skills, confidence and digital literacy they require to make a meaningful choice whether to access digital health and social care services. Digital services should be accessible, trustworthy and inclusive.
- Access and control of digital data. People should have access to data held about them by health and social care services and have control over this data and how it is used. People should give free, prior and informed consent to the use and sharing of their data, particularly outside health and social care. If consent is given, sharing should allow people to avoid 're-telling their story', be straightforward for all involved, and maintain the highest possible security before, during and after sharing.

Implementation of Anne's Law (Section 40)

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

text box:

Scottish Care has consistently welcomed approaches which protect and promote the rights of care home residents and which learn the difficult lessons of the Coronavirus pandemic. 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 a National Care Service should be developed and will be key to its success. Providers and services such as care homes should be recognised and treated as experts in their fields and partners with a contribution to make, with support to do this as required, rather than an over-emphasis on compliance.

Reserved right to participate in certain contracts (Section 41)

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

text box:

Scottish Care is especially concerned about this section of the Bill, given the ability for procurement to be limited by organisation type. 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, what criteria might be used and in what circumstances it would be utilised. It raises questions about what the intentions are behind this section and more detail is needed as to why this is desirable.

It is also not clear in how it is defining the third sector, which covers a vast array of supports and services. It should be noted that the independent sector - which incorporates not for profit and charitable provision alongside a diverse range of service models from larger organisations through to Scottish SMEs, employee-owned and family run services - is the largest provider of social care in Scotland and will play a crucial role in securing the future provision required to meet the needs and choices of Scotland's citizens. Scottish Care's members have significant concerns regarding how this might impact the ability of services to bid for contracts regardless of their quality or suitability and how this could detrimentally impact on individual choice, local needs and market balance. It would be extremely problematic for this section to become a politicised issue in policy or practice, not least because to implement blanket exclusions of organisations could significantly destabilise social care at a national and local level and substantially limit the ability of citizens to exercise the legal choice they have under existing legislation such as the Self-directed Support Act.

Instead, procurement must be centred on what services and supports can best meet the needs of individuals and communities, informed by strategic plans and ethical commissioning approaches and premised on providing a mix and balance of provision that secures quality, sustainability and choice. Blanket approaches and restrictions cannot achieve this.

Regulation of social services (Sections 42 and 43)

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

text box:

Scottish Care and its members are disappointed by the Bill's focus on regulation almost exclusively in terms of service closure. Whilst in rare examples of service failure it is paramount that the safety of those supported is protected, regulation exists to provide more than safety assurance in a handful of services but to support high quality care and continuous improvement and innovation across all regulated services. The Care Inspectorate has developed this approach over a number of years in collaboration with the sector and this focus represents a significant regression in progress in recent times, instead entrenching unhelpful elements of risk-aversion and compliance that have emerged during the pandemic rather than partnership-based practice. It also fails to recognise the multitude of factors that can contribute to service success or failure, many of which relate to wider environmental and contextual factors, that require a partnership approach to address. Furthermore, the inclusion of this section of the Bill does not reflect the risk of significant harm to people's wellbeing resulting from sudden service closure - for individuals and loved ones who rely on that service as well as the workforce. Instead, the focus should be on the Care Inspectorate and others' role in providing assurance that all efforts are made consistently and continuously to ensure that services are of high quality, able to positively develop and adapt and that they are sustainable.

There also appears to be a lack of detail or direction within the Bill regarding what the Care Inspectorate's role will be in relation to the NCS and what oversight and monitoring it will have of, for instance, Care Boards.

The role of Healthcare Improvement Scotland (HIS) in supporting Care Inspectorate's inspection process is outlined as only being for exceptional circumstances but it is not clear what the criteria or circumstances (other than a pandemic) would be for this to happen. This also raises questions as to what assurances there would be that sufficient and relevant expertise exists within HIS to effectively support a diverse sector in what could ultimately be a vast array of unpredictable and unique situations. There may be legitimate and valuable ways in which HIS or other bodies could provide expertise and knowledge around a particular area. However to Scottish Care's members, this section of the Bill signifies a problematic sense of health hierarchy and 'health knows best' when social care settings are ultimately examples of complex care needs, sensitive circumstances and non-clinical environments.

Learning from the pandemic experience must be acknowledged and reflected in this regard and the care home sector's experience in particular pointed to a number of examples of contradictory, confusing and duplicate oversight, assurance and inspection processes and advice.

Scottish Care's members are clear that the National Care Service (Scotland) Bill must be an opportunity for providing clarity and consistency around who regulates the social care sector, and must represent a decisive move away from the experience of the last two years. There needs to be clear regulatory leadership and a revised definition of the role of regulation, which should ultimately be focused on supporting service improvement and quality and align with the principles of the NCS.