



Gillian Martin MSP
Convener, Health, Social Care and Sport Committee
The Scottish Parliament
Edinburgh

BY EMAIL ONLY: HSCS.committee@Parliament.Scot

29 November 2022

Dear Convener,

National Care Service (Scotland) Bill
Local accountability and democracy

When I appeared before the Committee on 1 November, I undertook to write in connection with a question which was asked by Paul O’Kane MSP about the Law Society of Scotland’s views on local accountability and democracy in the context of the above Bill. Please accept my apologies for the delay.

Mr O’Kane highlighted a passage of our written evidence to the committee, which reads:

“It is not clear what evidence base suggests that a national service will improve quality and consistency of services. This lack of an evidence base also makes us question whether the centralisation of what are currently locally-delivered services can be justified in terms of the European Charter of Local Self-Government, and in particular Article 4(3) which provides that “Public responsibilities shall generally be exercised, in preference, by those authorities which are closest to the citizen. Allocation of responsibility to another authority should weigh up the extent and nature of the task and requirements of efficiency and economy.”¹

As I emphasised during the evidence session, the proposed National Care Service would represent a significant change to the *status quo* and would have the potential to impact significantly on many people across Scotland receiving or delivering social care and support. In these circumstances, we would restrict our role to emphasising the need for a clear and robust evidence base to support any legislative change of this scale, and to highlighting potential legal implications arising from the Bill.

The European Charter of Local Self-Government has not yet been incorporated into domestic law. Accordingly, it does not have direct legal effect and cannot be relied upon in domestic courts.

¹ Law Society of Scotland, Written Evidence: National Care Service (Scotland) Bill, September 2022, page 3. Available at: [22-09-02-ncswg-ncs-bill-written-evidence.pdf \(lawscot.org.uk\)](https://www.lawscot.org.uk/22-09-02-ncswg-ncs-bill-written-evidence.pdf)



As you will be aware, the European Charter of Local Self-Government (Incorporation) (Scotland) Bill was passed by the Scottish Parliament in Session 5. The Bill sought to give the charter, as an instrument of public international law, the same legal authority as domestic law via incorporation. However, following a reference under section 33 of the Scotland Act 1998 by the Attorney General and the Advocate General for Scotland, the Supreme Court has ruled that some provisions of the Bill are outwith the legislative competence of the Scottish Parliament and the Bill has been returned to the Scottish Parliament to allow these issues to receive further consideration.

It remains to be seen whether the European Charter of Local Self-Government (Incorporation) (Scotland) Bill will become law, and if so in what form. In light of the above, we would however urge the Committee to consider carefully the wider implications of the National Care Service (Scotland) Bill as set against the existing legislative landscape and other proposed reforms including the European Charter of Local Self-Government (Incorporation) (Scotland) Bill, the wider agenda of incorporating international human rights instruments into Scots law, and any reform of mental health and incapacity law following on the final report of the Scottish Mental Health Law Review.²

It is not the Society's role to comment upon the policy behind the National Care Service (Scotland) Bill, or any possible political implications for local accountability and democracy.

I hope this this is helpful to the committee.

Yours sincerely,

Jennifer Paton
Policy Manager
Law Society of Scotland

² [Scottish Mental Health Law Review Final Report | Scottish Mental Health Law Review](#)