

NATIONAL CARE SERVICE (SCOTLAND) BILL

MEMORANDUM – POLICY INTENTION OF PROPOSED SCOTTISH GOVERNMENT AMENDMENTS AT STAGE 2 OF THE NATIONAL CARE SERVICE (SCOTLAND) BILL

INTRODUCTION

1. This document describes the policy changes that the Scottish Government wish to make at Stage 2 by amendment to the National Care Service (Scotland) Bill ('the Bill'). It does not form part of the Bill and has not been endorsed by the Parliament, having been provided on the request of the Health, Social Care and Sport Committee for the purposes of that committee's Stage 2 scrutiny of the Bill. It should be read alongside the other documents provided to the Health, Social Care and Sport Committee in June 2024, which collectively form a package of documents for information for the Committee for Stage 2 of the Bill.
2. The Scottish Government has previously provided a financial assessment on these Stage 2 proposals to the Finance and Public Administration Committee (FPAC) in December 2023: [National Care Service Scotland Bill Financial Memorandum Letter of 11 December 2023 | Scottish Parliament Website](#)
3. We understand that the Health, Social Care and Sport Committee wish to take written and oral evidence on our Stage 2 proposals. Our intention is therefore to consider this evidence and potentially make any adjustments to our Stage 2 amendments, before formally lodging these amendments.
4. The Policy Memorandum for the Bill as Introduced¹ described the policy intention for that version of the Bill. This document's purpose is to explain the policy intention of the Scottish Government's proposed amendments for Stage 2 of the Bill. Subsequently, the following narrative will only retain text from the Policy Memorandum where it aids the description of what the Scottish Government would like to change at Stage 2, which means that some text from the original Policy Memorandum has been omitted.

¹ [Policy memorandum \(parliament.scot\)](https://www.parliament.scot)

POLICY OBJECTIVES OF THE SCOTTISH GOVERNMENT'S PROPOSALS TO AMEND THE BILL AT STAGE 2

Overview

5. The purpose of the National Care Service (Scotland) Bill is to improve the quality and consistency of social services in Scotland. That purpose remains. The most significant changes to the Bill through our proposed Stage 2 amendments are about the structural reform and governance changes that will be necessary to drive that improvement,

6. There are three main reasons for this changed approach to structural reform. The first is [the Scottish Government's shared accountability agreement with COSLA, which led to tripartite agreement between Scottish Government, local government and the NHS on matters requiring primary legislation. (The negotiations that led to the shared accountability agreement in July 2023 took place to explore if a compromise could be reached with local government, in light of concerns raised as part of Stage 1 of the NCS Bill.) The second is to respond to further engagement with, and views from, people with lived experience, and other key stakeholders, to the Bill as Introduced. The third is the financial context; as set out in more detail in the updated Financial Memorandum (sent to the FPAC in December 2023), this new approach will save around 90% of the costs of change.

7. The establishment of the NCS is not a single change that is happening in isolation, and there will need to be a clear relationship between the NCS and the strategic planning, delivery, reporting and improvement of public services more broadly.

8. Through our proposed Stage 2 amendments, the main vehicle for driving this improvement will be the creation of a National Care Service Board (NCSB). The proposed amendments will set out the expected powers and duties of the Board. The amendments also seek to ensure that secondary legislation can be used to set out additional details of aspects of the Board's work, including in relation to membership. At a minimum, we would expect the Board to include an independent chair, plus representation from the Scottish Government, local government, the NHS and people with lived experience of receiving, and working in, integrated health and social care services, including people who have been unpaid carers. A number of the powers and duties which the NCS Bill as introduced placed upon the Scottish Ministers and/or care boards will now sit with the National Care Service Board.

9. We intend to improve local delivery through reform of integration authorities. Integration authorities are existing bodies established under the Public Bodies (Joint Working) (Scotland) Act 2014.

10. Under the Public Bodies (Joint Working) (Scotland) Act 2014, Scottish Ministers can prescribe Health Board functions which may be delegated

to an Integration Authority, and functions which must be delegated, in relation to adults. The Public Bodies (Joint Working) (Prescribed Health Board Functions) (Scotland) Regulations 2014 (as amended) prescribe these functions. Functions which may be delegated are widely drawn, covering all functions under the National Health Service (Scotland) Act 1978, with exceptions. Functions which must be delegated are limited to particular purposes, set out in Schedule 3, Part 2 and Part 3 of the regulations. Of these, the following health care services are specified:

Schedule 3, Part 2

- accident and emergency services provided in a hospital;
- inpatient hospital services relating to the following branches of medicine—
- general medicine;
- geriatric medicine;
- rehabilitation medicine;
- respiratory medicine; and
- psychiatry of learning disability,
- palliative care services provided in a hospital;
- inpatient hospital services provided by general medical practitioners;
- services provided in a hospital in relation to an addiction or dependence on any substance;
- mental health services provided in a hospital, except secure forensic mental health services.

Schedule 3, Part 3

- district nursing services;
- services provided out with a hospital in relation to an addiction or dependence on any substance;
- services provided by allied health professionals in an outpatient department, clinic, or out with a hospital;
- public dental service;
- primary medical services provided under a general medical services contract, and arrangements for the provision of services made under section 17C of the National Health Service (Scotland) Act 1978, or an arrangement made in pursuance of section 2C(2) of the National Health Service (Scotland) Act 1978(a);
- general dental services provided under arrangements made in pursuance of section 25 of the National Health (Scotland) Act 1978(b);
- ophthalmic services provided under arrangements made in pursuance of section 17AA or Section 26 of the National Health Service (Scotland) Act 1978(c);
- pharmaceutical services and additional pharmaceutical services provided under arrangements made in pursuance of sections 27 and 27A of the National Health Service (Scotland) Act 1978(d);
- services providing primary medical services to patients during the out-of-hours period;
- services provided outwith a hospital in relation to geriatric medicine;
- palliative care services provided outwith a hospital;

- community learning disability services;
- mental health services provided outwith a hospital;
- continence services provided outwith a hospital;
- kidney dialysis services provided outwith a hospital;
- services provided by health professionals that aim to promote public health.

11. Community health services within scope of reformed IJBs should mirror the current prescribed delegated functions in the Public Bodies Act (Scotland) Act 2014 (the 2014 Act) [The Public Bodies \(Joint Working\) \(Prescribed Health Board Functions\) \(Scotland\) Regulations 2014 \(legislation.gov.uk\)](#) as closely as possible to avoid unnecessary disruption and to promote integrated services for people. A definitive list of what community health services are in scope is not required until secondary legislation.

12. There is a presumption in favour of integration where there is current inconsistency, and a consistent approach to delegation across Scotland is our aim. Specifically, this may mean that services should move from the may be delegated category to the must be delegated category in order to achieve that aspiration.

13. The prescribed Health Board functions that must be delegated under the 2014 Act only apply to adult health services. The legislation precludes Ministers from mandating the delegation of services for under 18s. However, we know that some Health Boards have voluntarily delegated responsibility for certain children's community health services to their respective integration authorities.

14. The reformed integration authorities will be accountable to the National Care Service Board for any services which have been delegated to them.

15. Local reform will require some new provisions in this Bill amending the 2014 Act, as well as the exercise of existing powers under that Act. Reformed integration authorities will oversee the planning and delivery of social care, social work and community health in their local area, and will be accountable to the National Care Service Board. They will also be renamed to NCS local boards to reflect the new governance landscape and relationship to the National Care Service Board. This approach replaces the set-up of new local Care Boards, and the transfer of functions, staff and assets, originally envisaged in the Bill as Introduced, provisions for which are intended to be removed.

16. These changes in our approach to structural reform and governance mean that Part 1 of the Bill will be substantially rewritten. This forms the greater part of changes described in this document.

17. The Bill as Introduced included provision to give Scottish Ministers relevant powers to transfer functions from local authorities or health boards to the National Care Service (Part 1, Chapter 6). The 2014 Act already gives Scottish Ministers a power to prescribe that certain functions must be

delegated under an integration scheme. We intend to retain this power instead as the means of defining the scope of the National Care Service. This power is currently exercisable in relation to persons of at least 18 years of age, and we intend to remove this restriction.

18. For the policy in Parts 2 and 3 of the Bill as Introduced, the Scottish Government's intention is to make more minor amendments than for Part 1.

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

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

21. It is essential that reforms to social care support, social work and community health services must be developed with the people who access that support, including unpaid carers, and with those who provide it. The Scottish Government is committed to engaging with people with experience to co-design the detail of the new system, to finalise new structures and approaches to minimise the historic gap between legislative intent and delivery. This has been essential in shaping the proposed revised Bill, and will continue to be a key part of our approach in developing secondary legislation and guidance under this Bill or through pre-existing powers. The Parliament will, therefore, have further opportunities to examine the implications of the Scottish Government's proposed reforms to the social care system.

Vision for the NCS

22. The vision for the NCS remains unchanged by the shared accountability agreement. The same benefits are sought as when the Bill was first introduced; it is just the route to achieving those benefits which has changed. This section is therefore largely similar to the Policy Memorandum from the Bill as Introduced, with any additions indicated as such within the text.

23. The Scottish Government is determined that social care and social work services should deliver consistent, high quality support to every person who needs it, across Scotland. Those services must have human rights at the heart of the system, enabling people to take their full part in society and live their lives as

they want to, while keeping individuals and communities safe. This Bill is one element that will support the delivery of this vision. 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 is 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.

24. It is intended that the NCS will work in tandem with other work already in progress to implement The Promise², and in relation to children's services.

25. Additionally, the NCSB would have a role in place based policy linking closely with other services, such as housing, homelessness, education, the justice system, and the Scottish Prison Service to ensure everyone has seamless access to the support they need. The NCSB and NCS local boards will play a key role in existing joint- planning arrangements such as Community Planning Partnerships, Community Justice Partnerships, Children's Services Planning, and Alcohol and Drugs Partnerships.

26. The NCS will aim to improve people's experiences of accessing social care support, increase prevention and early intervention, and to ensure that social care support (both for people with support needs and unpaid carers) is human rights-based and outcomes-focused. The NCS will aim to ensure everybody in Scotland can access a consistent social care support service, while

² "The Promise" [The-Promise_v7.pdf \(carereview.scot\)](#) is the key report of the Independent Care Review, initiated by the First Minister in February 2017, which aimed to identify and deliver lasting change in Scotland's 'care system', and to transform the wellbeing of infants, children and young people.

noting the importance of local decision making and flexibility, and also that they can access early intervention and preventative support.

27. The priority throughout the implementation of the NCS programme will be the continuity of support for individuals. Phasing from 2025-26 will need to be based on delivery readiness assessments. Clear, transparent local transition plans will be developed with partners so that everyone affected is comfortable with what is happening, where and when.

28. In order to support the development work required to design and establish an NCS and related reforms, the Scottish Government has developed a holistic communications and engagement strategy that includes the dissemination of information, as well as open dialogue, to ensure the Scottish Government engages with the right people in the right way on plans as they are developed, and to ensure that the new service is designed around the needs of people who access social care and supports the needs of unpaid carers and care workers. For example, the Scottish Government has set up steering groups which includes people with lived and living experience of social care as well as experts and professionals working in care. As the operational processes are being established to allow a growth in both the depth and breadth of co-design activity, these groups are intended to provide a feedback and challenge function, and also test wider communications to ensure they are accessible and tailored for our audiences.

29. The significant commitment to co-design is to ensure that the Scottish Government can reduce the gap between legislative intent and delivery that has been experienced historically in this area. It will therefore be vital to ensure a strong evidence base for all options that are developed through co-design. As a minimum, each option will need to demonstrate value for money where benefit and quality will be key considerations, and meet affordability tests, before being recommended for decision via Parliamentary or Government processes.

BACKGROUND

30. This background section of this document is largely the same as the Policy Memorandum from the Bill as Introduced, with some updates to statistics and minor changes.

31. In this document, the term “social services” is used to cover the wide range of support that enables people to lead a full life and achieve the outcomes that are important to them, as well as related services. People may need support for many reasons, for example as a result of illness, physical disability or frailty, learning disabilities or mental health conditions, substance use or experience of homelessness. Social services also support unpaid carers in their caring role. They provide help for children and families who may need additional support, or where children are unable to live with their own families, and work with people to address offending and its causes, while effectively managing risk.

32. Social services encompass both social work and social care support. Social work is a statutory role which involves assessing need, managing risk and promoting the wellbeing of individuals and communities. Social care support is an umbrella term for services which directly support people to meet their personal outcomes.

Why Social Care Reform is Required?

33. The population receiving social care and support is diverse, with wide ranging needs and circumstances. An estimated 1 in 25 (234,000) people of all ages in Scotland were reported as receiving social services during 2022/23³.

34. There are also an estimated 700,000 to 800,000 unpaid carers in Scotland⁴, and over 212,000 people employed in the social service sector⁵. Overall this means that around one fifth of the population are affected by the quality of social services, including the conditions offered to the workforce.

35. Over many years, various issues have demonstrated that social services and the integration of health and social care services are not working as well as they should. The Scottish Government commissioned Derek Feeley (a former Scottish Government Director General for Health and Social Care and Chief Executive of NHS Scotland) to chair the Independent Review of Adult Social Care (IRASC) in September 2020 to consider the problems in a systematic way.

36. In February 2021, the Independent Review of Adult Social Care (IRASC) report ⁶ was published. The IRASC report concluded that whilst there were strengths in Scotland's social care system, it needed revision and redesign to enable a step change in the outcomes for the people accessing care and support.

37. The changes needed were summarised by IRASC into three main challenges:

- Shift the paradigm - from viewing social care support as a burden to seeing it as an investment in society; moving from services that manage needs in a crisis to preventative support that enables people to flourish, and ensuring consistent and fair provision
- Strengthen the foundations - to ensure consistent and effective implementation of the ambitious legislation already in place, strengthening and valuing the workforce, and giving unpaid carers the support they need to continue in their vital role

³ [People supported through Social Care Services; Support provided or funded by health and social care partnerships in Scotland 2022/23 - People supported through Social Care Services - Publications - Public Health Scotland](#)

⁴ The Scotland's Carers - March 2024 Update Release based on the Scottish Health Survey shows an estimated total of around 696,000 carers (+/-55,000) living in Scotland, including 28,000 young carers. Around 4% of these unpaid carers are estimated to be receiving carer support.

⁵ [Scottish Social Service Sector: Report on 2022 Workforce Data | Scottish Social Services Workforce Data \(sssc.uk.com\)](#)

⁶ [Foreword - Adult social care: independent review - gov.scot \(www.gov.scot\)](#)

- Redesign the system - creating a National Care Service (NCS) “to drive national improvements, to ensure strategic integration with the National Health Service, to set national standards, terms and conditions, and to bring national oversight and accountability” to the sector; creating a commissioning and procurement system based more on collaboration rather than an emphasis on price and competition, and crucially, amplifying the voice of lived experience in the process of redesign.

Health and Social Care Integration

38. Since 1948, local authorities have been responsible for social care support, in various forms, and local health boards have been responsible for health services. However, health and social services often need to work together to support people effectively. Integration of the planning, funding and delivery of services can help to ensure that people get the right care and support at any time, as their needs change, in a way that is seamless from the point of view of the person accessing support. Integration places a greater focus on prevention and anticipatory care and support, which in turn can help people to stay in their own homes and communities and continue taking part in activities that they enjoy for longer.

39. Integration of health and social care in Scotland can be traced back over 20 years to the “Sutherland Report”⁷ and the Joint Future Group⁸, with the aim of improving partnership working between organisations and to secure better outcomes for service users and their carers.

40. This was followed in 2005 by the Community Health Partnerships (Scotland) Regulations 2004, and then the Public Bodies (Joint Working) (Scotland) Act 2014 (the 2014 Act). The 2014 Act set out a framework for integrating adult health and social care services, and enabled creation of new partnerships, known as Integration Authorities (IAs), with statutory responsibilities to coordinate local health and social care services.

41. At present, local authorities have statutory responsibility for providing social care support, and Scottish Ministers, through NHS Health Boards, have responsibility for health care. Under the 2014 Act, and secondary legislation made using powers granted by that Act, local authorities and Health Boards work together as IAs, to manage a range of services collectively, including budgets. They are required to delegate certain functions (and budgets) to a local integration authority, and may delegate others. In most areas the integration

⁷ With Respect to Old Age: Long Term Care - Rights and Responsibilities, Report of the Royal Commission on Long Term Care, The Stationery Office; 1999. Sir Stewart Sutherland chaired the Royal Commission and was credited as the author of this UK-wide report. Available online: [With respect to old age : long term care--rights and responsibilities : a report : Great Britain. Royal Commission on Long Term Care : Free Download, Borrow, and Streaming : Internet Archive](#)

⁸ The Joint Future Group was a Scottish Executive (former name of the Scottish Government) programme which started in 1999. It published a report on its findings in November 2000: [swjoint.pdf \(scie-socialcareonline.org.uk\)](#) and the Scottish Executive responded to that report in January 2001: [Scottish Executive's Response to the Report of the Joint Future Group: contents page](#)

authority is an Integration Joint Board (IJB) which includes members from both the local authority and local Health Board.

42. The Highlands area has a different arrangement also provided for under the 2014 Act, known as a Lead Agency arrangement, in which Highland Council takes responsibility for all health and social care services for children, and NHS Highland provides all health and social care services for adults. Highland Council and NHS Highland are the constituent authorities of the IA in this arrangement.

43. The integration authority plans what care is needed in its area and directs (and provides funding to) the Health Board and the local authority to deliver it. The local authority is responsible for commissioning and directing procurement of social care support services.

44. Each of the above developments has moved health and social care into a more integrated space and delivered improvements. However, IRASC identified a number of challenges which have prevented the current structures from delivering the scale of improvement required. These include:

- Inconsistency of user experience (“postcode lottery”)
- Complex and inconsistent governance arrangements
- Lack of national oversight and collaboration
- Lack of collaborative and strategic leadership
- Non-integrated budgetary and financial planning.

45. Lack of consistency arises from the fact that Integration Authorities are required to manage certain services together (in particular adult social care support, primary care and most community health services), but have a choice for other services, such as children’s social work and social care, justice social work, and homelessness and housing support. This leads to differences between the experiences of people in different areas, and particular difficulties when a person wants to move between areas with different approaches.

46. The IRASC also identified problems with the structure of IJBs. As a joint organisation between the local authority and health board, they do not hold their own budgets or employ their own staff, and the Chief Officer is accountable to both bodies. These complex arrangements have not always resulted in the high quality and well-integrated service that was intended.

47. Whilst IRASC focused on adult social care, most Integration Authorities have delegated responsibility for a wider remit that includes health, services for children and families and justice delivery. The limitations of the current IJB structures therefore have much wider relevance. The social work profession also expressed concerns about fragmenting the system by separating adult social care from other aspects.

48. The IRASC recognised that there are significant strengths in the existing legislation which sets out the current functions relating to the delivery of social care support: this includes for example the Carers (Scotland) Act 2016, and the Social Care (Self-directed Support) (Scotland) Act 2013. However, there is a gap between the ambition of this legislation and its implementation, due to the structural issues identified. As a result, the main focus of the parts of the Bill relating to local integration is on facilitating improvements by building upon existing legislation and enhancing existing structures.

Consultation

49. In August 2021, the Scottish Government published a consultation⁹ on its proposals to improve social care delivery in Scotland, following the recommendations of IRASC. In relation to the NCS, the consultation proposals suggested widening the scope beyond adult social care to include children's social work and social care, justice social work, social care services in justice, drug and alcohol services, and related services. This recognised the breadth of current integration and the potential repercussions of separating different types of social care.

50. A large number of engagement events were held to support the consultation. Overall, responses were received from 1,291 respondents. The Covid pandemic during this time accentuated the message from IRASC - specifically that it was clear that improvement in social services was a priority, that people wanted a National Care Service accountable to Scottish Ministers, with services designed and delivered at a local level, and that people expected the Scottish Government ministers to deliver this as soon as possible.

51. The independent analysis of responses¹⁰ to the consultation by PricewaterhouseCoopers (PwC), was published on 10 February 2022. The headline findings of the consultation demonstrated broad agreement with the Government's proposals, which were at that date to bring together social care and community health services for all ages under a National Care Service accountable to Scottish Ministers. There were concerns and risks raised in the consultation responses about the potential for disruption to services, the loss of local accountability, impacts of the changes on the workforce and adverse impacts on remote, rural and island areas. These issues are considered below in the relevant sections.

Shared Accountability Agreement

52. The Bill as Introduced provided that social work, social care support and community health services would be brought together under a National Care Service, accountable to Scottish Ministers. It made provision for Scottish Ministers to transfer statutory functions relating to social work, social care and community health from local authorities and Health Boards respectively, to

⁹ [Ministerial foreword - A National Care Service for Scotland: consultation - gov.scot \(www.gov.scot\)](https://www.gov.scot/ministerial-foreword-a-national-care-service-for-scotland-consultation)

¹⁰ [1. Introduction - National Care Service: consultation analysis - gov.scot \(www.gov.scot\)](https://www.gov.scot/1-introduction-national-care-service-consultation-analysis)

themselves, or to newly created Care Boards, which would report directly to Ministers. In addition, it made provision for the transfer of the staff, property and liabilities associated with the delivery of any transferred functions (except transfer of NHS staff).

53. Subsequent discussions with local government took place in spring 2023, with a view to reaching a consensus position on the Bill, which would allow progress to be made on the urgent improvements needed to strengthen the delivery of integrated health and social care for people. In June 2023, Scottish Ministers and COSLA Leaders agreed that overall accountability for social work services, social care support and community health services would be shared between the Scottish Government, local government and NHS Health Boards.

54. Under this shared accountability agreement, statutory functions would no longer be transferred. Local authorities would remain legally responsible for the delivery of social work and social care support and would keep the staff and assets required for providing those services. NHS Health Boards would remain legally responsible for the delivery of community health services. Under these arrangements, the responsibilities and governance of Primary Care independent contractors (for example GPs or dentists) would not change. Contracting arrangements, clinical governance and delivery responsibilities (drawing from the 1978 National Health Service (Scotland) Act) for Primary Medical services, including provider of last resort, would remain the responsibility of Health Boards, with policy oversight from Scottish Ministers.

55. At a national level, local government, NHS Health Boards and Scottish Ministers would work together to provide new national level oversight and to drive improvements to the quality, consistency and fairness of these services.

56. Following the conclusion of further discussions with local government and NHS leaders, in November 2023, Scottish Ministers stated their intention to amend the Bill so that a National Care Service Board would be established as the primary means of operationalising and managing shared accountability for those social work services, social care support and community health services which fall within the scope of the National Care Service. The Board would provide new national level governance and oversight to drive greater consistency of outcomes for people who access services, drive improvement in these services and provide better support to the workforce and unpaid carers.

Policy objectives of the Bill: specific provisions proposed to be amended at Stage 2

57. The following sections of this Memorandum describe the key policy areas in the Bill which the Scottish Government would wish to change by amendment at Stage 2 of the Bill. Each section below outlines what the amendments aims to achieve (its policy objectives), and how that differs from the approach in the Bill as Introduced, and how stakeholder views were considered. Where alternative approaches were considered, these are summarised.

PART 1: THE NATIONAL CARE SERVICE

Principles

58. Part 1, Chapter 1 of the Bill as Introduced provided the legal foundations of the National Care Service. Section 1 defined the National Care Service principles by which the service will operate.

59. These principles are as follows:

- The NCS will be an investment in Scotland’s people and communities and provides an opportunity to:
 - Embed human rights in care support
 - Increase equality and enable people and communities to thrive
 - Provide financially stable care, giving people long term security
 - Improve outcomes through prevention and early intervention
 - Effectively co-design services with people with lived and living experience
 - Continuously improve services to advance equality and treat people with dignity
 - Ensure that the NCS communicates with people in an inclusive way.
 - Ensure that the care workforce is recognised and valued
 - Ensure that the NCS is an exemplar of Fair Work practices

Stage 2 amendments

60. The NCS principles reflect these opportunities and make clear from the outset the Scottish Government’s commitment to deliver on them. The NCS Board will be required to carry out its primary function in the way that seems to the Board most consistent with the NCS principles and NCS Strategy. The Scottish Government amendments at Stage 2 will reflect the shared accountability agreement and ensure that the NCS principles are effective in delivering ambitions for the NCS.

61. The principles draw on the findings of the IRASC including:

“Human rights, equity and equality must be placed at the very heart of social care and be mainstreamed and embedded.”

“For us to achieve the improvements we seek, they [the social care workforce] need to feel engaged, valued and rewarded for the vitally important work that they do.”

“We need a shift away from crisis being the entry point to the system of social care support to a system that values prevention and early intervention.”

62. While the intent of the principles provisions in the Bill are broadly the same as when the Bill was first introduced to Parliament, engagement with people with lived experience and key stakeholders has highlighted some areas where provisions could be strengthened. As such, Scottish Government stage 2 amendments intend to include provisions to provide greater clarity on what is meant by ‘human rights’.

63. In addition, the Scottish Government would wish to amend the Bill to expand the principle around early intervention and preventative care to more fully reflect the importance of ongoing care. This would include support for the increasing complexity of need as people approach the end of their life, which is often with multimorbidity, and to reflect the importance of rehabilitative care alongside early intervention and preventative care.

64. A further amendment would expand on the principle around continuous improvement to take account of the whole life experiences (including any psychological trauma) of the individual within service planning and care provision. Additionally the principle on inclusive communications would be extended to ensure a consistent and more inclusive approach to communications so people receive information and express themselves in ways that best meets their individual needs.

65. To reflect the shared accountability agreement, amendments are proposed to include provisions to streamline the application of the principles. In particular, replacing the Integrated Planning Principles/ Integrated Delivery Principles (IPPs/IDPs) with the NCS principles. Using existing legislative powers, the National Health and Wellbeing Outcomes (NHWOs) and Health and Social Care Standards (HSCS) would also be reviewed and amended to align with the NCS principles and Scottish Ministers’ National Care Service strategy, which will set out the context and strategic direction for the NCS in line with the principles. It is anticipated that this will assist in simplifying what would otherwise be a complex landscape of principles, IPPs/IDPs, standards and outcomes.

66. The amendments also intend to provide for creation of guidance to ensure the principles are applied in relevance to each level of the NCS structure, . In addition, amendments seek to place a duty on Scottish Ministers to periodically review the principles. This includes to reflect ongoing co-design outcomes. Amendments will also seek to create requirements to report how the principles will be delivered at the various levels and report progress against them. NCS local boards will also be required to have regard to the NCS principles when preparing their local strategic plan, to demonstrate how these will be met as part of delivering delegated functions.

67. Finally, whilst the NCS principles already closely align with the IPPs/IDPs , it is necessary to ensure that important aspects of the IPPs/IDPs are included and retained, to ensure there is greater consistency for delivery and oversight bodies and the NCS builds on progress already made in integrating

health, social care and social work services. Therefore, amendments are proposed to include provisions for additional principles to create that further alignment.

NCS NATIONAL

Responsibility for the National Care Service

68. As previously described, in line with the shared accountability agreement, Stage 2 amendments propose that, instead of transferring functions to Scottish Ministers and care boards as intended in the Bill as Introduced, local authorities and NHS Health Boards should retain legal responsibility for the delivery of their own services as well as retaining associated staff and assets. Scottish Ministers would have strategic framework accountability for the National Care Service; retaining their existing powers of direction and ownership of national policy on social work services, social care support and community health, as well as setting the national strategy for the NCS.

69. The new national level oversight and governance provided through this shared accountability model would drive improvement to the quality, consistency and fairness of these services. It would improve the experience of people accessing services while safeguarding the integrity of local democratic accountability and maximising the benefits of reformed local service delivery.

National Care Service Strategy

70. The Stage 2 amendments are intended to make provision for the Scottish Ministers to set a national strategy for the NCS. The national strategy would be distinct from strategic planning, which is undertaken specifically in relation to the provision of integrated services. The national strategy would identify key challenges for NCS services, set out the aims of the NCS and propose actions which Scottish Ministers would take, or consider others should take, to achieve those aims. In preparing the strategy, Scottish Ministers would be required to have regard to the NCS principles.

71. The national strategy would be intended to guide NCS local boards, local authorities and Health Boards by setting out the strategic direction for the NCS.

72. The National Care Service Board would be guided by the national strategy when carrying out its functions. NCS local boards, local authorities and NHS Health Boards would have a duty to have regard to the national strategy when preparing a strategic plan and/or delivering NCS services.

73. Scottish Ministers would be required to conduct a public consultation to inform the development of the national strategy.

74. Scottish Ministers would be able to amend the national strategy. Stage 2 amendments provide that the strategy must be reviewed within five years of its publication and at least every five years after that. If Scottish Ministers decided a new strategy was not required, they would have to publish a statement explaining why the existing strategy remained appropriate.

75. The purpose of the national strategy would be to provide clear strategic direction and establish a shared understanding of national priorities and aims for the NCS, the implementation of which local areas could adapt to meet local priorities and circumstances. It is expected that the national strategy would present an opportunity to streamline and simplify existing national policies and strategies that impact on NCS services.

National Care Service Board: Structures and Governance

76. The Policy Memorandum for the Bill as Introduced, set out the Scottish Government's expectation that the National Care Service would be established as either an Executive Agency or as a part of the core Scottish Government staffed by civil servants. However, to enable shared accountability, it is now proposed that a National Care Service Board should be set up as a new public body, with a legal identity separate from the Scottish Government.

77. The purpose of the amendments are to establish the National Care Service Board as a public body, and set out its functions to ensure that shared accountability can be discharged through a body which is independent of Scottish Ministers and has the necessary powers to take material action when required.

78. The National Care Service Board is intended to provide a national oversight and improvement role for those social work services, social care support and community health services which fall within the scope of the National Care Service. It would prioritise the actions that will make most difference to outcomes for people: clear and consistent national standards, performance against those and accountability for delivery.

79. It is proposed that Stage 2 amendments establish a general purpose for the National Care Service Board of overseeing the NCS local boards with a view to securing continuous improvement in the wellbeing of the people of Scotland. The Board would be required to discharge its duties in ways which best reflect the National Care Service principles and the National Care Service Strategy.

80. Details of how the Board will work in practice will be informed by further co-design and stakeholder engagement, but it is envisaged that the activities of the Board would include the following:

- developing standards and guidance

- reviewing and seeking delivery assurance on local strategic plans and ethical commissioning strategies.
- monitoring system performance to ensure consistent, fair, human rights-based social work, social care support and community health services, underpinned by effective complaints and enhanced advocacy provision for people.
- maintaining a support and improvement framework which will aim to provide support to local areas when monitoring indicates that standards are not being met with powers of intervention, when required, as a last resort.
- ensuring visibility of data, information, and analysis about social care support, social work and community health services through reporting on delivery.
- national commissioning and procurement by agreement for complex and specialist social care services, including prison social care.
- seeking assurance on public protection arrangements for those services under the NCS.
- ensuring meaningful involvement for stakeholders and people with lived experience in decision making.
- overseeing multi-agency national workforce planning for NCS services.
- monitoring portability of care packages across Scotland and UK territorial boundaries.
- providing market shaping and financial oversight of social care providers
- providing support to local delivery partners.

81. For those activities for which the Board requires specific legislative functions, further detail is provided below.

National Care Service Board Membership

82. To reflect shared accountability, Stage 2 amendments propose that as a core minimum the membership of the National Care Service Board will include members appointed to represent the Scottish Ministers, local government and NHS Health Boards, as well as people with lived experience of accessing or delivering integrated health and/or social care services, and people who are or have been unpaid carers.

83. It is expected that all National Care Service Board Members would have voting rights. Scottish Ministers would appoint all Members and the Chair of the Board, including local authority and Health Board members who will have been nominated by the bodies they represent.

84. Stage 2 amendments propose that a power is created for Scottish Ministers to expand the provisions about Board membership in the Bill through secondary legislation. This power would be exercised following further co-design and engagement with key stakeholders, including people with lived experience, to determine more detailed policy in relation to:

- The number of members and composition of the Board, which could include, the general qualifications and/or experience required for any appointment to the Board; and/or specific criteria for certain Board members to meet, such as particular qualifications and experience, , holding a certain office, being representative of certain interests or being nominated by a particular person. This would allow, for example, consideration to be given to whether additional criteria, such as intersectionality, would help to establish the best way of selecting people with lived experience to be members of the Board.
- The appointment process and terms of appointment, including any specific provision for appointing a Board chair and deputy chair. This would allow consideration to be given to whether the deputy chair should be a formal statutory position, or an administrative construct. It is envisaged the deputy chair would be selected by the Board from within its membership.
- Any grounds for dismissal or disqualification beyond those standard provisions set out in the Bill

85. The intention would be that the content of any regulations would effectively be incorporated into the relevant Part of the Schedule detailing the National Care Service Board's constitution and general operation, rather than this detail only being set out in standalone regulations.

National Care Service Board Accountability

86. The intention is for the National Care Service to discharge shared accountability at different levels of the system. Stage 2 amendments propose that membership of the National Care Service Board will have representation from each of the shared accountability partners within the membership of its Board. The National Care Service Board would then report to Scottish Ministers, Local Government and NHS Health Boards. It is expected that a Memorandum of Understanding would then be put in place between the shared accountability parties to set out how they will approach joint decision making at the level above the Board.

87. As the intention is to create the National Care Service Board as a public body, Scottish Ministers would have legal responsibility for some aspects of oversight and accountability. Wherever possible, these decisions would be made in consultation with the shared accountability partners. Ministerial responsibilities would include:

- Appointment of the National Care Service Board members and Chair
- Setting strategic direction for the Board through its framework document
- Oversight of Board performance and finances through a sponsorship function in the Scottish Government

- The standard provision for public bodies of having a general power of direction over the National Care Service Board, with which the Board must comply
- The standard provision for public bodies of having a power to issue guidance to the National Care Service Board, to which the Board must have regard
- Approving and laying before the Scottish Parliament the National Care Service Boards' Corporate Plan. This will set out how the Board will carry out its functions and how it will best reflect National Care Service principles and give effect to the National Care Service strategy
- Providing financial assistance to the National Care Service Board, which may include grants, guarantees and indemnities, but does not include loans
- Ensuring that Ministers have the ability to request relevant information, data and reports from the National Care Service Board

Embedding lived experience in decision making

88. Stage 2 amendments would require the National Care Service Board to ensure that people with lived experience of accessing or working in NCS services or of being an unpaid carer are meaningfully involved in decision making. The means by which the Board will achieve this requirement would be set out in its corporate plan, which will be subject to Ministerial approval.

89. Stage 2 amendments would enable the National Care Service Board to do anything which was necessary, expedient or otherwise conducive to the performance of its functions. Under this general power the Board would establish procedures and ways of working to support people with lived experience to be engaged in the work of the National Care Service Board, including, but not limited to, being represented in the membership of the Board. The nature of support the Board would be able to provide to individuals would include financial, practical and/or other accessibility related support. An important aspect of the Board's role in ensuring people with lived experience are meaningfully involved in decision making would be the means by which it enabled lived experience Board members to draw on the expertise of wider groups of people with lived experience in carrying out their role. To this end, it is expected that the Board would provide for participation at a more structural level - for example, by establishing and supporting representative forum(s) through which the Board's lived experience members can seek and channel views. Further detail of the type of support required to enable full participation of people with lived experience will be co-designed.

90. The purpose of these amendments is to deliver on the Scottish Government's core commitment to working together with people with lived experience, to ensure that systems, processes and decision making within the NCS are person-centred, robust, fully informed, and cognisant of the implications on all those who interact with services.

Support and Improvement Framework

91. The Bill as Introduced gave the Scottish Ministers powers to take action against what were to be newly established care boards, when issues with performance arose at local level. In light of the shared accountability agreement, and the subsequent decision to deliver local reform through existing integration authorities (now to be renamed NCS local boards), Stage 2 amendments now propose to place these powers to intervene at local level with the National Care Service Board. Scottish Ministers will retain their existing powers of direction, under the Social Work (Scotland) Act 1968, the National Health Service (Scotland) Act 1978, and the Public Bodies (Joint Working) (Scotland) Act 2014.

92. It is proposed that the Bill is amended at Stage 2 to give the National Care Service Board a function of monitoring the NCS services and, where it identifies a need for a service to improve, taking action to improve it. In deciding whether a service needs to improve, the Board would be required to give particular regard to whether that service was being provided in a way that was consistent with the National Care Service strategy (which would, in turn, be aligned to the NCS Principles) and the relevant NCS local board's strategic plan.

93. The Board would be required to set out a support and improvement framework document, which would describe how this function would be exercised – including the progressive actions the Board might take when it identified a need for improvement and the thresholds/trigger points for moving between different stages of the framework. In preparing the support and improvement framework document, the Board would require to have regard to the need for complementing, rather than duplicating the work of other public authorities.

94. At the lower stages of the framework, the amendments would enable the Board to put in place appropriate support to assist the NCS local boards to improve in line with agreed standards and outcomes. It is envisaged that the kind of support provided would vary depending on the type of issue identified, but amongst other things might include the provision of advice, guidance or training, the facilitation of support by senior staff to guide improvement, the facilitation of secondment or loans of staff to undertake service improvement work, finance review and/or the provision of technical input, leadership development, clinical or care governance or workforce development. It would remain the responsibility of NCS local boards to deliver improvements.

95. In the event that those supports did not achieve the desired improvements, and the NCS local board was escalated to the higher stages of the framework, amendments would provide the Board with the ability to intervene more directly by transferring an NCS local board's functions to another NCS local board. This would relate to delegation arrangements only and would not affect the local authority's or Health Board's statutory responsibility for the function.

96. Stage 2 amendments provide for two scenarios in which the transfer of functions to another NCS local board might occur: emergency; and service failure. Emergency situations would be handled by the Board outwith the support and improvement framework – recognising that they may arise through

circumstances outwith the control and at no fault of the NCS local boards. Any circumstance of service failure, however, would require to be handled in accordance with the Board's support and improvement framework.

97. Stage 2 amendments also seek to amend the Public Bodies (Joint Working) (Scotland) Act 2014, to provide the National Care Service Board with a power of direction over NCS local boards, and also over local authorities and/or Health Boards, when the direction relates to the delivery of delegated functions. Should an NCS local board, local authority or Health Board receive mutually incompatible directions from the National Care Service Board and the Scottish Ministers, compliance with the direction from the Board would not be required. It is expected that Scottish Ministers would set out any specific priorities for the support and improvement framework as well as parameters or conditions for the use of the Board's powers of intervention, by using their powers to provide guidance to the Board, and also to set the Board's strategic direction through its framework document. The purpose of the support and improvement framework provisions is to provide for a more structured and progressive approach to taking early and effective action when standards are not met. Placing the powers for support and intervention with the National Care Service Board would mean that material action could be taken in line with shared accountability.

98. The framework would focus on proactive improvement and early intervention, which brought NCS local boards into discussions at an earlier stage and required their constructive engagement with any support the Board provides. We expect this would result in more frequent resolution of local performance issues at lower stages of the framework. The move from crisis response, to early intervention would result in less waste, less need for intervention by regulators, better value for money at system level, and critically, better outcomes for people.

99. The details of the support and improvement framework would be co-designed with shared accountability partners and other key stakeholders, including people with lived experience, once the Bill had passed. This would ensure the activity of existing improvement and regulatory bodies was recognised and factored into the Board's role in support and improvement, and that appropriate links were made with any existing outcome and improvement frameworks, in particular the NHS Scotland Support and Intervention Framework. It would also help to determine the circumstances in which the Board would exercise its powers of intervention, and any constraints which should be applied to those powers.

100. To ensure the outcome of co-design can be adequately reflected, and that the framework can be improved and adapted to changing circumstances over time, Stage 2 amendments provide Scottish Ministers with a power to use secondary legislation to confer additional powers upon the Board, following public consultation.

101. Under section 6 of the Bill as Introduced, Scottish Ministers would have had a duty to produce a strategic plan, setting out arrangements in relation to the provision of services they were providing by virtue of transferring local authority functions, or designating Health Board functions as NCS functions. Shared accountability means that Ministers would no longer transfer statutory functions from local authorities, or designate NCS functions, and so would not be responsible for the delivery of services.

102. Stage 2 amendments propose that the National Care Service Board, rather than Scottish Ministers, would have responsibility to commission any nationally commissioned services. The National Care Service Board would be required to exercise all its functions in ways which reflect the NCS Principles and the national strategy for the NCS, and to set out how it would do that in its Corporate Plan. It would be for Ministers to set out, in their strategy or in separate guidance for the Board, additional requirements for the National Care Service Board to set out a strategic plan and ethical commissioning strategy for nationally commissioned services.

National Care Service Board Monitoring

103. As identified above, Stage 2 amendments propose to give the National Care Service Board a specific responsibility for the monitoring and improvement of the performance of NCS services. This function would have to be carried out in accordance with the Board's support and improvement framework, and aims to ensure the Board has the ability to identify where a service needs to improve, and take action to bring about improvement.

104. More broadly, Stage 2 amendments propose to give the Board general powers to take actions which are incidental to its functions, and also provide that the purpose of exercising those functions is to oversee the NCS local boards with a view to securing continuous improvement in the wellbeing of the people of Scotland. Separate amendments would also enable the Board to require information, reports and statistics from bodies such as NCS local boards, local authorities and Health Boards, to fulfil its oversight role. These amendments would enable the National Care Service Board to undertake a wide monitoring function, which would inform the exercise of a range of activities the Board would be expected to carry out beyond the implementation of the support and improvement framework. Activities would include the identification of systemic issues and priorities for improvement; and the identification of examples of good practice for sharing more widely. The Board would also have the ability to make information about the performance of NCS services publicly available – and it is envisaged that Scottish Ministers would set out this role in the Board's framework document.

105. Recognising the various reporting requirements already placed on the integrated health and social care system, the Board would be expected to work

collaboratively with other bodies that collect information, with a view to minimising the burden on those who provide that information.

106. The purpose of this monitoring role would be, for the first time, to create a consistent national baseline against which future improvements and interventions could be monitored. The National Care Service Board's role in monitoring and reporting would provide greater clarity and transparency, and the ability to track and monitor realisation of the anticipated benefits the NCS will deliver.

Local Strategic Planning

107. Chapter 2 of the Bill as Introduced set out that each care board must have a strategic plan, which set out their vision, objectives and budgets for their care board area, and included an ethical commissioning strategy in relation to those services. An ethical commissioning strategy was defined as a strategy for ensuring that arrangements for providing the service best reflected the NCS principles. It was intended that Scottish Ministers would review and approve care boards' strategic plans against statutory guidance, which would be co-produced with stakeholders.

108. In line with the shared accountability agreement, and the subsequent decision to deliver local reform through existing integration authorities (now to be called renamed NCS local boards), it is no longer intended that Ministers should have that role. Stage 2 amendments are now proposed which would amend the Public Bodies (Joint Working) (Scotland) Act 2014 (2014 Act), to provide the National Care Service Board with a function to review and provide feedback on NCS local boards' local strategic plans. NCS local boards would be required to take account of any views expressed by the National Care Service Board. The review would provide the Board with the opportunity of ensuring that strategic plans could be delivered through existing local resources, that the NCS strategy and NCS Principles had been appropriately reflected, that the NCS local board had undertaken an effective population needs assessment, and that plans contributed to relevant national outcomes or such additional criteria, including in relation to ethical commissioning, as the Board may have set out in guidance.

109. Stage 2 amendments also propose that the National Care Service Board should receive a copy of NCS local boards' annual performance reports. We envisage that the National Care Service Board would scrutinise these reports with a view to ensuring the NCS local boards had carried out their integration functions in a way which implemented their strategic plans, as well as best reflecting the NCS strategy, NCS principles, and any other guidance the National Care Service Board had provided in this regard.

Guidance

110. The Stage 2 amendments propose to amend the Public Bodies (Joint Working) (Scotland) Act 2014 to place a requirement on NCS local boards, local authorities and Health Boards to have regard to guidance issued by the National Care Service Board on any aspect of NCS Services.

111. The National Care Service Board would be required to consult NCS local boards, local authorities, Health Boards, people with lived experience and any other people Scottish Ministers considered to have an interest in any particular guidance, before issuing that guidance.

112. The Scottish Ministers' current powers relating to community health, social work and social care guidance will remain in place.

General Functions

113. The Bill as Introduced also enabled the Scottish Ministers and the newly established care boards to:

- Conduct or assist others to conduct research relevant to health and social care services
- provide training and development relevant to the NCS services , including reimbursement of costs
- Provide financial and other assistance to organisations connected to NCS services.

114. These provisions reflect existing powers that Scottish Ministers have under the Social Work (Scotland) Act 1968 in relation to social care. Following the shared accountability agreement, and subsequent proposals to establish a National Care Service Board, and to deliver local reform through existing integration authorities (now to be renamed NCS local boards) Stage 2 amendments are now proposed to place these powers instead with the National Care Service Board. The purpose of these amendments is to ensure the Board has the powers it needs to fulfil its general purpose of overseeing the NCS local boards with a view to securing continuous improvement in the wellbeing of the people of Scotland. The Scottish Ministers will retain their current powers under the Social Work (Scotland) Act 1968.

Power to Confer Additional Functions

115. Stage 2 amendments propose to give Scottish Ministers a power to confer additional functions on the National Care Service Board through secondary legislation. The purpose of this power is to help to future proof the National Care Service Board, allowing for the Board's role to be shaped by further co-design and stakeholder engagement, lessons learned from its initial experience, and evolving circumstances within the wider system. The core functions of the Board, as set out in the Bill or in any subsequent primary legislation, would only be able to be removed through primary legislation.

116. The Scottish Ministers would be required to consult the National Care Service Board, Health Boards, local authorities, and people with lived experience before using this power.

Additional National Care Service Board Proposals

117. As the intention, through Stage 2 amendments, is to establish the National Care Service Board as a new public body, a number of provisions are required to set out the way in which that public body will operate. Full details of these provisions are contained within the Stage 2 amendments shared with the Committee in June 2024, but would include:

- The requirement for the Board to produce a corporate plan detailing how it will fulfil its functions in a way which upholds the NCS Principles and contributes towards the national strategy. The Board would have a duty to consult local authorities, Health Boards, NCS local boards and people with lived experience on the corporate plan. It could also consult any other person it considered to have an interest in the plan. The plan would be approved by Scottish Ministers, before being laid before the Scottish Parliament.
- The requirement for the Board to produce an annual report detailing how it has exercised its functions, including how those functions have been carried out in such a way as to contribute towards delivering on the national strategy for the NCS and achieving the NCS principles, as well as how the Board has sought to promote the NCS Principles. The report would be shared with local government, Health Boards and with the Scottish Ministers, and would be made publicly available.
- The ability to employ staff and determine their terms and conditions, with the approval of Scottish Ministers. The first chief executive would be appointed by Scottish Ministers.
- The ability to delegate Board functions to individual Board members, staff or committees/sub-committees – recognising the Board will retain the power to deliver those functions and will remain responsible for any actions or decisions taken in relation to those delegated functions.
- The ability for the Board to charge fees for providing services or carrying out functions, subject to Ministerial approval (and recognising there are no current plans for the Board to charge fees).
- The ability to establish committees and sub-committees, the membership of which may include or be comprised entirely of people who are not members of the Board. The Board may determine remuneration and allowances for Committee/sub-committee members but in doing so may not exceed rates approved by Scottish Ministers for Board members.

- The circumstances in which members of the Board would be automatically disqualified from membership (those being that the individual is disqualified from being a member by virtue of the Ethical Standards in Public Life (Scotland) Act 2000; or is a member of the House of Commons or the Scottish Parliament).
- The circumstances in which Scottish Ministers may remove a member (those being absence from Board meetings for at least 6 consecutive months without just cause; being considered by Scottish Ministers to be unfit to continue as a member, or being considered by Scottish Ministers as unable to perform the functions of a board member).

118. These provisions are intended to ensure the smooth running of the Board, and the transparency and visibility of its operations.

119. We also propose to add the National Care Service Board to the list of Contracting Authorities within the Procurement Reform (Scotland) 2014 Act., and to the Public Contracts (Scotland) Regulations 2015 as a Contracting Authority. The NCS Board will be added to Part 2, Other Central Government Contracting Authorities. This means it will not be subject to the GPA requirement for equal treatment with other countries signed up to GPA trade agreement. The NCS Board will have the power to procure. By adding the NCS Board to the relevant lists, we will make it clear that procurement law applies to them. Some Contracting Authorities are required to comply with the World Trade Organisation Agreement on Government Procurement (GPA) and others do not.

Consultation

120. The consultation proposals were based on the recommendations of the IRASC that the Scottish Ministers should be accountable for social care, that a National Care Service should be established, and that Integration Authorities should be reformed to take sole responsibility for social care and community health services, instead of this being shared by local authorities and health boards. The analysis of the consultation found broad support for Scottish Government proposals. 72% of respondents agreed that the Scottish Ministers should be accountable for social care through a National Care Service.

121. The rationale behind these changes was to address the previously outlined challenges identified by the IRASC, which have meant the current structures have not delivered the scale of improvement required to meet people's needs consistently and effectively. Inconsistency of people's experiences with social care arises out of complex and inconsistent governance arrangements, and the lack of national oversight and coordination, lack of integrated budgetary and financial planning, and lack of collaborative and strategic leadership has made it more difficult to address these problems.

122. Transferring statutory responsibility for social care to the Scottish Ministers and establishing the NCS was identified as directly addressing some of

these challenges and enabling everyone to work together to deliver more consistent improvements in people's experiences of care across Scotland.

123. Under the shared accountability agreement it is proposed that statutory functions will no longer be transferred to Scottish Ministers, but will be retained by local authorities and Health Boards. It was agreed through tripartite discussions between Scottish Government, local government and NHS Boards that a National Care Service Board will be established as the primary means of implementing shared accountability.

124. The vision for the NCS remains unchanged by the shared accountability agreement. The same benefits are sought as when the Bill was first introduced; it is just the route to achieving those benefits which has changed. Where initially it was intended that Scottish Ministers would provide national oversight and coordination for community health and social care, it is now proposed, through Stage 2 amendments, that the National Care Service Board will take that role for those social work services, social care support and community health services which fall within the scope of the National Care Service.

125. The Board would ensure that there are clear lines of accountability and responsibility at the national level for actively managing the integrated community health and social care system and planning for services. In fulfilling this role, the Board would work in conjunction with the NCS local boards, monitoring system performance through intelligence and data from local provision of services, providing support and directing improvement where standards are not met, and supporting collaborative and strategic leadership at local level. In setting the national strategy for the NCS, Scottish Ministers would provide strategic direction and identify shared priorities, which will drive greater consistency, while ensuring there is sufficient flexibility to accommodate local needs and circumstances.

Alternative Approaches

126. The following alternatives for establishing the National Care Service Board were considered, with business as usual included for comparison:

Do Nothing/Business As Usual – Do not establish a new National Care Service Board in any form, but continue current arrangements for collaborative working between Ministers, local government and Health Boards.

- This option would see the existing improvement work continue, such as making progress with improving pay in social care, strengthening implementation of Self-Directed Support, and placing a greater focus on prevention and early intervention. The Scottish Government would remain committed to working with partners and particularly with local authorities and Health Boards to ensure the social care system delivered the best possible outcomes. It is widely acknowledged that the current system is

not working for people, however, and this option was considered not to facilitate the level of change required, or to deliver on the key IRASC recommendation to introduce a new structure of national oversight and governance.

Establish the National Care Service Board as an Advisory Group.

- The Group would have a role to work collaboratively to support a system-wide focus on improvement, agree priorities for improvement activity and delivery and make recommendations to Scottish Ministers. As the Group itself would not have any statutory functions or separate legal personality, it would not be able to ensure standards or hold people to account in its own right. It would be at the discretion of Ministers, local government and/or Health Boards to take action arising out of the Group's recommendations. This option would not empower the Board to take material action when required, or to take decisions or actions independent of Scottish Ministers, and as such, would not realise shared accountability.

Add responsibility for the National Care Service Boards functions into the remit of an existing health and social care or improvement body.

- This would require changes to legislation, to the governing board of the existing body and staffing structure. Under this option, the governing board of the body would become the NCS Board. This would fundamentally alter the functions, scope and nature of any existing body and could potentially create conflicts of interest for improvement bodies. There was a risk this could disrupt the current required functions of existing bodies to an unacceptable extent e.g. if an NHS Board was considered it would have to be reconstituted. The conclusion was that this was likely to be more difficult and potentially more costly to deliver than creating a new public body with specific and bounded functions.

NCS Local Boards

127. Sections 4 and 5 of the Bill as Introduced make provisions about care boards, including their establishment and abolition. Sections 7 – 9 describe the strategic plan that a care board is required to have. Sections 14 – 17 describe Ministers' powers to intervene in relation to care boards. Chapter 5 of Part 1 relates to other functions connected to the provision of care that the Scottish Ministers and care boards can carry out, such as research. Chapter 6 confers powers on the Scottish Ministers to determine which functions should be exercised by which NCS institution, and to transfer people and property in regard to those transfers. Schedule 1 makes further provision about care boards, including their general powers, committees and sub-committees, accounts and annual reporting, membership and staff.

128. Reforming local community health and social care structures is critical to the overall success of the NCS reform programme.

Consultation

129. The consultation proposed the replacement of Integration Authorities with ‘Community Health and Social Care Boards’, which would be directly accountable to the Scottish Ministers and have responsibility and authority for planning, commissioning, and procurement of community health and social care and other relevant support. These boards would:

- Have board members who will represent the local population, including people with lived and living experience, and carers, in addition to local elected members to preserve local democratic accountability
- Employ their own chief executives and staff who plan, commission and procure care and support
- Oversee the delivery of all community health and social care services and support within their local area, monitoring and improving impact
- Be able to commission services from local authorities, the NHS and the third and independent sectors.

130. Around three quarters of the respondents that answered the question agreed that these Community Health and Social Care Boards should be the sole model for local delivery of community health and social care in Scotland.

Further work and impact of the Shared Accountability Agreement

131. Following both the shared accountability agreement with local government leaders in June 2023 and the conclusion of further discussions with local government leaders and NHS health boards in November 2023 on the operationalising of the shared accountability agreement, Scottish Ministers have agreed the necessary local reform can be achieved within the existing established structures. The current policy intent is therefore for the NCS at a local level to be delivered by reforming current integration authorities rather than creating new public bodies.

Bill provisions proposed by amendment at Stage 2

132. The Scottish Government therefore wishes to amend the Bill at Stage 2 to reflect this change of approach. The amendments make provision for the Scottish Ministers to reform the current approach to community health and social care integration. This will maintain the primary model for delivery, the Integration Joint Board, but reform it. This will support implementation of NCS priorities by building on existing structures and good practice.

133. The amendments proposed are as follows:

- To remove all forms of local integration authority aside from the Integrated Joint Board model. This will limit integration schemes to this model, requiring that any integration authority using one of the other options to move to an IJB model and preventing any other integration

authority from adopting a different model. The Scottish Government will work with relevant local partners to support locally led transitions as a result of this change.

- To rename all integration authorities to NCS Local Boards (NCSLBs) to ensure a single, clear and consistent naming convention for all integration schemes in Scotland. Individual local boards would therefore be renamed to e.g. NCS Orkney board.
- To ensure the NCSLBs will report to the NCSB.
- Amendments on strategic plans have the purpose of introducing consistency in how strategic planning is undertaken and embedding desirable outcomes in the process, such as ethical commissioning; the NCS principles; carrying out population needs assessments and consulting with the public in the area. Amendments will also require local strategic plans to be cognisant of the NCS national strategy, and introduces an obligation to consult and take account of the views of the NCS Board.
- The amendment for a power to change the deadline for annual reports has the purpose of providing flexibility to NCSLBs in the cycle of annual reporting when data is not available in the same cycle.

134. Further to the above amendments to the primary legislation, it is also the Scottish Government's intention to utilise existing regulation making powers in the 2014 Act to bring forward further regulations on:

- The role of localities, including their remit and regulation of localities
- Chairing arrangements for the NCS local board
- Voting rights and wider arrangements to facilitate full inclusion of voices of lived experience in local decision making
- Local board committee structure and governance

Additional National Functions

Improvement

135. The Bill as Introduced intended to give the Scottish Ministers responsibility for ensuring that there is continuous improvement in the way that the National Care Service delivers services. Under shared accountability, it is proposed that national oversight of the NCS and improvement in the quality of NCS services should now sit with the National Care Service Board.

136. Stage 2 amendments therefore proposed relate to a fundamental ambition of the NCS to improve outcomes for those accessing social care support. This stems from an IRASC recommendation that, “the National Care Service should lead on the aspects of social care improvement and support that are best managed once for Scotland, such as workforce development and improvement programmes to raise standards of care and support.”

137. There is evidence of many improvement programmes across government and within the wider social care support landscape, but there is less evidence of how areas for improvement are identified, how data requirements are recognised or data is collated, how good practice is shared and how impact is evidenced on a national basis.

138. Amending the Bill to give the National Care Service Board the responsibility for monitoring and improving of quality would support the prioritisation of improvement work with a focus on evidence, informed action, and clear monitoring to ensure demonstrable impact at a national level. It would support the development of a national framework that has:

- an agreed vision and common understanding of improvement
- coordinates evidence informed action around the key themes
- agreed improvement principles and an improvement model
- a consistent way of measuring improvement, acknowledging that the starting point will not be the same for everyone.

139. It is proposed that a collaborative approach will be taken to developing a national framework via a multi-agency steering group co-chaired with COSLA and SOLACE. The development of the work will involve the voice of people with lived and living experience.

Consultation

140. The consultation material for the NCS included questions relating to improvement stating that, “improvement must be a key focus of the NCS. The establishment of a single national body, with clear lines of accountability to Ministers at a national level, gives us the opportunity to ensure that consistent, high standards of performance are developed and maintained across Scotland. That national view will also ensure that learning can be shared and implemented across the country. Intelligence gained from inspection and scrutiny of services will be used to identify where improvement is needed, and themes will be fed back into commissioning and procurement.”

141. The consultation analysis found that the perceived benefits of this approach included:

- the NCS taking responsibility for improvement across community health and care services

- more consistent outcomes for people accessing care and support across Scotland
- better coordination of work across different improvement organisations
- the opportunity to create greater consistency across Scotland, while offering more guidance for people accessing care and support and staff.

142. Risks identified included:

- the potential loss of the voice of people accessing care and support and of care workers
- impact on local services, understanding of local needs and local accountability
- the variation of needs especially where more rural and remote areas such as the Islands are concerned, and staffing concerns with regards to retention and morale
- the potential for increased bureaucracy and disruption to those areas that currently work well.

Further work and impact of the Shared Accountability Agreement

143. Following the shared accountability agreement, the intention for a national focus on improvement, secured through clear lines of accountability, remains. Rather than Scottish Ministers, the proposal is now that a new National Care Service Board will ensure that consistent, high standards of performance are developed and maintained across Scotland and that learning can be shared and implemented across the country.

National Social Work Agency

144. A National Social Work Agency (NSWA) will be established and given the important links and function that social work will have within the wider NCS structure, we will ensure necessary reporting links and close working between the two bodies (NSWA and NCS Board). Since the publication of the Bill as Introduced and the Policy Memorandum that accompanied it, the Scottish Government has been working with principal partners and is in the process of seeking approval for the NSWA to be established as a new public body in the form of an executive agency. The NSWA will contribute to meeting the Scottish Ministers' duties to provide a national care service, reflecting its principles and human rights based approach, and to monitor and improve the quality of the services that the NCS oversees, since those services are expected to include social work as well as social care.

145. Under current arrangements, the Scottish Government sets the overall strategic framework for social work delivery. There is no single national body which has oversight and leads social workers' professional development, education, improvement, data and workforce planning. Terms and conditions are set by individual employers. Therefore, it is difficult to have an overview of the sector, and to report on and strategically plan the social work workforce.

146. The NSWA will seek to ensure a skilled, supported and sustainable social work profession by providing national leadership and overseeing:

- social work education (pre and post-qualifying)
- workforce planning
- policy rationale and improvement activities based on evidence-based insight
- implementation support with social work employers to ensure Scotland achieves its policy intentions
- training and professional development

147. These objectives will enable social workers to work more effectively with people to transform their lives and implement rights-based practice.

148. The Scottish Government also wishes to promote and reinforce national leadership of the social work profession. To this end we wish to amend the Bill at Stage 2 to put the role of the National Chief Social Work Adviser on a statutory footing through the NCS Bill and identify the National Social Work Agency as the body to support them. We are also intending a minor amendment to s58(4) of the Regulation of Care Act (2001). This is intended to allow for delegation of 'part' as well as 'whole' functions of s.58 that already exist.

Consultation

149. The IRASC recommended, "Establishing a national organisation for training, development, recruitment and retention for adult social care support, including a specific Social Work Agency for oversight of professional development."

150. The Scottish Government's consultation asked questions about the benefits and risks of establishing a NSWA, whether the NSWA should be part of the NCS, and what areas and issues the NSWA should lead on. Consultation engagement events were organised in collaboration with frontline social workers to ensure their views were included. There will be ongoing collaboration and engagement with the sector, including frontline social workers, on the development of the NSWA.

151. The analysis of NCS consultation responses showed high levels of agreement for the establishment of a NSWA amongst frontline social workers and stakeholder organisations.

152. Several key stakeholder responses to the NCS Consultation gave their support to the establishment of a NSWA, including the Scottish Association

of Social Work and Social Work Scotland. Further consultation was undertaken on the preferred model for the NSWA as part of an options appraisal exercise with COSLA and Social Work Scotland.

Further detail and impact of the Shared Accountability Agreement

153. To realise the vision of the NSWA, underpinning the Verity House Agreement and a commitment to shared accountability, as mentioned above it is proposed that Scottish Government establish the NSWA as a new public body. A public body makes possible a formal partnership between national government (OCSWA (SG)) and local government (COSLA) and SWS (the national body for Chief Social Work Officers and other local authority social work managers). This approach is considered by partners and stakeholders to be critical to success, ensuring closer working between national and local levels, and between policy, practice and implementation.

154. The Scottish Government has worked with principal partners (Cosla and Social Work Scotland) and agreed that the foundations of the NSWA will be:

- Ensuring a social work workforce that is equipped and resourced to undertake its professional duties
- Improving local services while ensuring local flexibility, through agreement on national, regional and local approaches to policy development and service provision
- Supporting local implementation of national policy consistently across Scotland whilst focussing on practical solutions for social workers
- Developing approaches, such as national standards for social work, to support a more consistent experience of social work that adapts to local and personal requirements and preferences
- Promoting support that is person-led and consistent, wherever people live in Scotland

Alternative approaches

155. Consideration was given to alternative approaches. Due to the proposed partnership working agreement between COSLA, SWS and OCSWA, a multi-staged, collaborative approach was taken to the options appraisal of the NSWA. This helped ensure partnership involvement throughout the process. Potential options included establishing a NSWA independent of the Scottish Government, and whether there were other bodies who could deliver the objectives of the NSWA, including adding the NSWA's remit to existing bodies such as the Scottish Social Services Council or the Care Inspectorate. However, these bodies/organisations already have distinct and extensive remits, both of which go beyond just social work. Another alternative considered was to establish a separate organisation independent of the Scottish Government; however it is important that the functions of the NSWA for social work are well integrated with other parts of the NCS, for example in workforce planning and in raising the status of social services as a whole.

156. An options appraisal exercise was undertaken by the principal partners (COSLA and SWS) to look at all the options for the delivery of the NSWA, with a shortlist of three options then costed and appraised further through the Outline Business Case for the NSWA. This concluded that the best option was to establish the NSWA as an Executive Agency of the Scottish Government.

Workforce Planning

157. Policy proposals for the NCS regarding National Workforce Planning can be delivered through wider powers conferred on the NCSB as reflected in the NCS Bill amendments and through an amendment to s58(4) of the Regulation of Care (Scotland) Act 2001 to allow for partial delegation of ministerial functions relating to aspects of workforce planning. One associated proposal for the NCS is that it should have national oversight of workforce planning for the social work and social care workforce (known as the social services workforce).

158. Currently workforce planning for an integrated Social Services workforce does not have an established process or single owner. In order to deliver on the aims and ambitions of the NCS, and more broadly – deliver an integrated Health and Social Care system, a sustainable workforce, is critical. This can be best supported via integrated planning at a national level.

159. Section 58 of the Regulation of Care (Scotland) Act 2001 underpins the Scottish Social Services Council's ability to "ascertain" the required numbers of different types of workers in the social services sector. However, the complexity of the workforce due to the different types of employers hampers the ability to collect data in a way that allows for effective national workforce planning. This is one of the issues that the NCS will address.

160. Providers in the third and independent sectors, as well as local authorities, have a limited ability to undertake evidence-based integrated workforce planning. The lack of integrated workforce planning between the health and social services workforces has also been identified as an ongoing issue. There is currently no national workforce planning for social workers, the majority of whom are employed by the 32 local authorities. There is also no national commissioning of education places for student social workers.

161. As a result, workforce planning has proven difficult, with inconsistent standards being applied across social care commissioners and providers. For the Scottish Government, it has proven difficult to take an active role in influencing and directing workforce planning and workforce data, due to the sheer number of social care providers and a current lack of directive powers.

162. On the strength of existing evidence, it has become clear that the current approach is not working, and that an alternative approach has to be implemented as a priority. Consequently, it is proposed that the NCSB will have national oversight of workforce planning for the social care workforce (social

services workforce) within the NCS and the NSW will lead on workforce planning for social workers and social work students.

Consultation

163. The consultation sought views on how to make it easier to plan for workforce across the social care sector. Individuals and organisations were in agreement that having ‘a national approach to workforce planning’ (74% of individuals and 77% of organisations) as well as ‘providing skills development’ opportunities for relevant staff in social care (65% of individuals and 77% of organisations) would be the easiest way in which to plan for workforce across the social care sector. The need to take into account the requirements of rural and remote areas, including the islands, was also highlighted.

Strategic planning and ethical commissioning strategies

164. Commissioning is the process of assessing and identifying the need for services, developing a vision, strategy, policy, and forward plan to meet these needs; and designing a service or system for delivery which includes monitoring and continually improving the effectiveness of how these needs are met in practice. Commissioning includes deciding whether a service should be delivered directly by the organisation or obtained from another provider, taking account of the market available and other relevant factors.

165. Ethical commissioning strategies will support the NCS to implement Fair Work and the other NCS principles. Ethical commissioning, in relation to social services, has a person-centred care first/human rights approach at its core, ensuring that strategies focus on high quality care. This includes Fair Work practices which encourage the development of a quality, sustainable, and appropriately valued work force; climate and circular economy considerations to support a just transition to net zero; financial transparency and commercial viability of any outsourced services; full involvement of people with living experiences throughout, putting the person at the centre of making the choice; and a shared accountability between all partners and stakeholders involved in delivery.

166. The Scottish Government proposes that the NCS will (separately to the Bill process) develop and manage a package of guidance and tools for ethical commissioning and procuring of social care services and supports. This guidance will support application of the NCS principles in commissioning and procurement decision making. This will support a consistent approach to the way commissioning and procurement delivers a person centred, human rights based approach that supports the outcomes and needs of the individual, meets minimum quality standards established for social care services, supports and encourages Fair Work, promotes sustainability and ensures consistent implementation and equitable quality of service throughout Scotland. The Scottish Government is committed to developing the guidance and tools together with commissioning and procurement professionals, service providers, people who access social care support, care workers and unpaid carers and other relevant stakeholders and delivery partners.

Ethical procurement

167. If the commissioning process determines that a service should be procured from an external provider, procurement is the process of engaging collaboratively with the market, strategic partners, and representatives of those who access and provide the services, to deliver the commissioning strategy, policy, and service in practice. Ethical and sustainable procurement ensures that these are not only delivered to the right quality, in a timely, efficient, legal, and commercially sustainable way, but that the Scottish Government uses the power of procurement to meet those broader social, economic and environmental objectives agreed in the vision.

168. The Scottish Ministers supported all the IRASC recommendations in respect of procurement reform.

169. Under the NCS, local government will have responsibility for the majority of social care procurement. It is proposed that the National Care Service Board should arrange specialist and complex services which could require input from a range of public sector organisations, nationally and on a ‘once for Scotland’ basis.

170. Current procurement legislation provides a well-established framework to support an ethical approach to procurement in the NCS. The Public Contracts (Scotland) Regulations 2015 apply a Light Touch Regime (LTR) to social and other specific service contracts at certain threshold value, currently £663,540. This regime specifically allows quality, continuity, accessibility, specific user needs and the involvement/ empowerment of users to be taken into account when awarding contracts. Below the LTR threshold value, no procurement procedural rules apply.

171. To further support the delivery of the NCS principles, including fair work, and embed an ethical commissioning approach to procurement practices we are proposing to add new provisions to the Bill that will require public bodies that purchase NCS services to detail how they will meet the strategic plans and ethical commissioning strategies.

172. We are also proposing to amend the Bill to give Scottish Ministers the power to require public bodies who purchase NCS services to inform the National Care Services Board when their Procurement Strategy and Annual Report is published. This will support the National Care Service Board. Both amendments are intended to support the delivery of ethical commissioning and procurement, and alignment of strategic planning and delivery to close the implementation gap noted in the IRASC.

Consultation

173. The consultation sought views on the NCS being responsible for developing and managing a suite of guidance and tools for ethical (commissioning and) procurement.

174. There was widespread agreement that the NCS should be responsible for the development of guidance and tools with 83% of respondents in agreement, and the majority stated that it would help to provide services that support people to meet their individual outcomes, and contribute to better outcomes for social care staff.

Fair Work

175. The Scottish Government is seeking to improve Fair Work practices consistently across the social care sector. The Bill proposes to enable the NCS to support Fair Work in the sector, by including Fair Work within the guiding principles of the NCS (section 1 of the Bill), establishing the NCS as an exemplar of Fair Work. Strategic Plans and ethical commissioning strategies also need to reflect the NCS principles. This will support the National Care Service Board to improve the way in which Fair Work is identified and considered as part of commissioning and procurement practices.

176. Legislation on employment rights and duties is reserved to the UK Parliament. However since 2016, the Scottish Government has provided funding via local authorities to help ensure workers were paid a minimum hourly rate, through annual funding. Whilst this national policy has resulted in the highest minimum hourly rates across the UK, it is not an efficient way to raise pay, and does not address the issues of poor or inconsistent terms and conditions. The Scottish Ministers will continue to consider how they can improve these issues within devolved powers.

177. There are over 212,000 workers in the social care sector - 82% are women, 3% are on zero hour contracts, rising to 7% for housing support and care at home.¹¹ Progressing Fair Work across social care, including increasing pay, would not only help social care staff but will also positively impact on wider Scottish Government priorities on child poverty, Fair Work and post-Covid pandemic recovery.

178. Evidence through regular feedback from the workforce, those they support, employers and trade unions (and from research such as the Fair Work Convention Inquiry and subsequent report into social care)¹², indicates the workforce is undervalued for the work they do. The workforce is subject to inconsistent and often low rates of pay, and lack of consistency in terms and conditions across the 1,200+ social care employers. Poor pay and conditions contributes to the workforce, and careers within the sector, being seen as 'low skilled,' and therefore undervalued.

179. Current rates of pay and conditions do not support effective recruitment and retention of a highly skilled workforce. Many skilled and valued workers choose to leave a career in social care, as they can often earn more or have better conditions working in other professions (such as retail and

¹¹ [Scottish Social Service Sector: Report on 2022 Workforce Data | Scottish Social Services Workforce Data \(sssc.uk.com\)](https://www.sssc.uk.com)

¹² [Fair Work in Scotland's Social Care Sector 2019 - The Fair Work Convention](#)

hospitality), whilst managing less pressure and challenge than they do within roles in the social care sector. This limits the capacity of the workforce, which places additional demand on services, which can result in delays and levels of need not being consistently met within communities. As demand for social care grows, with more people ageing and having more complex needs, a stable and resilient workforce is required to meet the demands.

Consultation

180. Collective arrangements and funding conditionality (which are the specific terms attached to funding from the Scottish Government, which must be met) are potential mechanisms to increase pay and conditions across a sector. The NCS consultation found significant support for its proposals to increase pay and conditions by collective agreement, and giving commissioners of services and current and prospective employees more transparency over how Fair Work is applied within employer organisations through a Fair Work Accreditation scheme.

181. The IRASC recommendations on workforce and Fair Work were also highlighted by the Fair Work Convention's report into Social Care (2019)¹³, which the Scottish Government responded to by creating the Fair Work in Social Care Group to support taking the recommendations forward. These include working towards ethical commissioning practices; as part of the development of the NCS; the development of recommendations for a minimum fair work procurement standard for social care; developing options, that recognise and take into account a new sector-level body responsible for ensuring that social care workers have effective voice; proposals for the development of a collective bargaining structure where these arrangements do not currently exist; and the development of a Fair Work Framework in social care.

182. The NCS consultation found strong support for the concept of the Fair Work Accreditation Scheme amongst individuals and organisations alike (83% of individuals and 81% of organisations were in favour). The feedback suggests that such a scheme would help highlight the value and importance of people who work in social care. The Scottish Government will continue work to consider the potential for such a Scheme, and any further activity would be subject to stakeholder consultation.

183. Specifically, the NCS Consultation analysis demonstrated that improved pay and conditions for people working in the care sector were supported, with 83% ranking improved pay and 79% ranking improved terms and conditions (this includes improvements to sick pay, annual leave, maternity/paternity pay, pensions, and development/ learning time) as factors that would make social care workers feel more valued in their role.

184. In addition, the majority of respondents (87%) were in agreement that a national forum should be established to advise the NCS on workforce

¹³ The [report](#) made 5 recommendations including for the Scottish Government to support the creation of a new sector body that establishes minimum standards for fair work terms and conditions and to reform social care commissioning.

priorities, terms and conditions and collective bargaining which would include workforce representation, employers and care boards. It was suggested that a national forum would be an opportunity to give employees “a voice”. The Scottish Government will consider the most appropriate arrangements to advise the National Care Service on these issues.

Inclusive communications and independent advocacy

185. The NCS principles in the Bill as introduced included provision that the NCS and those providing services on its behalf are to communicate with people in an inclusive way. This commitment remains. However, it is now intended that the onus is on Scottish Ministers, the National Care Service Board and other services delivered as part of the NCS to communicate in an inclusive way. This is so as not to individualise the issue. This means ensuring individuals who have diverse communication needs (in relation to speech, language or otherwise) can receive information and express themselves in ways that best meets their individual needs.

186. The Independent Review of Adult Social Care highlighted the importance of access to independent advocacy and independent advice in empowering people who access support and unpaid carers, and this has continued to be echoed by stakeholders and in co-design work to date. Amendments therefore now include provisions for independent advice and independent information as well as independent advocacy, as it is clearly important to enhance all three services across the scope of NCS functions.

187. Consistent with the human rights-based approach to the development of the NCS, determining how independent advocacy, independent advice and independent information should be provided will continue to be done through co-design with people with lived or living experience of accessing and providing services. This means these amendments continue to be deliberately broad in scope, allowing regulations to be made if co-design evidences a need for this.

188. Further, the Policy Memorandum for the Bill as Introduced indicated that officials would take a coherent, consolidated and consistent approach to independent advocacy provision across the range of NCS services. However, further engagement with stakeholders has led officials to instead seek an asset-based approach to provision, using what already exists locally within the sector and enhancing that, rather than bringing in something new on top of or instead of existing provision. Engagement to date has led officials to believe this will result in better outcomes for advocacy partners (i.e., those using advocacy services).

Charter and Complaints

Charter of rights and responsibilities

189. A fundamental tenet of the human rights-based approach to the NCS is providing accountability to those accessing support and empowering them with clarity on the pathway to uphold their care-specific rights or human rights in relation to the NCS. Central to facilitating this is the development of an NCS Charter of Rights and Responsibilities co-designed with those with lived or living experience. Respondents to the NCS consultation said that of the seven suggested options, a Charter of Rights and Responsibilities was the most important for a new system for NCS complaints and redress. The NCS Charter will set out what people can expect from the NCS and provide a clear pathway to recourse should their rights in the Charter in relation to the NCS not be met.

190. Chapter 3 of the Bill as Introduced, required the Scottish Ministers to prepare and publish the Charter following appropriate consultation and engagement, including those with lived experience. As a minimum, the Bill as Introduced required the Charter to set out 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.

191. It should also include 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

192. The Bill as introduced also states that the NCS Charter may set out such other information as the Scottish Ministers consider appropriate in relation to services within the scope of the NCS, including information that the Scottish Ministers believe should be included following consultation and co-design with stakeholders.

193. While the intent of the Charter provisions in the Bill are broadly the same as when the Bill was introduced to Parliament, engagement with people with lived experience and key stakeholders has highlighted some areas where provisions could be strengthened. As such, Scottish Government Stage 2 amendments now wish to include provisions to explicitly elicit the views of any individual who has a personal interest in the wellbeing of another individual to whom the NCS provides a service (for example, a family member or carer).

194. Further, to reflect the developing role of the NCS Board and also to future proof provisions, the intention is for amendments to now include provisions

to enable Scottish Ministers to delegate future Charter development to the Board and for the Board to promote the Charter to the public.

195. Finally, due to the shared accountability arrangement, amendments wish to reflect that it is no longer the intention that the NCS itself will provide services.

Complaints

196. The IRASC recommended that, “When things do not work well for people and their rights have not been upheld, they must have rapid recourse to an effective complaints system and to redress”.

197. The intent of the complaints provisions in the Bill are broadly the same as when the Bill was introduced to Parliament. Our aim remains to strengthen the current complaints and redress system for complaints about services delivered under the NCS, by:

- Creating a simple point of access for making complaints about social care support, social work services and community health services, which will then pass them on to those best placed to deal with them.
- Implementing reforms, agreed as part of the co-design process, to how complaints are handled, including any redress.
- Ensuring the National Care Service Board (NCSB), and any services provided nationally under the NCSB, are brought under the jurisdiction of the Scottish Public Services Ombudsman (SPSO) so there is independent oversight of their complaints handling.
- Exploring, through co-design, what role the NCSB should have in supporting and monitoring good practice in complaints policy and practice.

198. The Bill as introduced intended that Scottish Ministers would take full accountability for the NCS and care boards (local delivery bodies) would be established. The care boards would have been brought under the jurisdiction of the SPSO. The intention now is for shared accountability for the NCS through the NCSB, which will drive forward improvement and monitoring for adult social care. The intention is that care boards are no longer being created, as the changes needed at local level are intended to be delivered by reforming the existing integration authorities.

199. We therefore propose to make an amendment to the Scottish Public Services Ombudsman Act 2002 to ensure that the SPSO, in its role as oversight body, has jurisdiction over the new NCSB. We do not intend to make similar provisions for integration authorities, as they already come under the SPSO's jurisdiction through existing legislation.

Powers to Intervene with Contractors

200. The Bill as Introduced intended to give the Scottish Ministers emergency powers to intervene in an agreement with a third party for social care, in line with what was then to be their overall accountability for the quality of social care provision. As the shared accountability agreement concluded that there should be no transfer of functions, staff or assets under the NCS, it is proposed that local authorities and Health Boards will now continue to hold delivery functions for social work services, social care support and community health services, including through the procurement of independent or third sector service providers. As neither Scottish Ministers nor the National Care Service Board would hold contracts for the delivery of these services, and Scottish Ministers would no longer be intended to be ultimately accountable for the performance of local authorities and Health Boards, as the statutory function holders, these provisions would no longer be required. Stage 2 amendments therefore propose that these provisions be removed from the Bill

201. Any contracts the National Care Service Board holds, for example in relation to nationally commissioned services, or other service provision to support the delivery of the Board's core functions, would be managed through standard contract management rather than through specific provisions within the Bill to allow for intervention.

Justice Social Work

The role of justice social work

202. Justice social work (JSW) services, with support from partners including third sector organisations, are responsible for the delivery of community interventions and related assessment and support, including:

- Assessments and reports to assist decisions on sentencing
- Court services to assist those attending court
- Group work interventions which are used to address offending behaviours using intervention programmes
- Bail information and supervision services as an alternative to custodial remand
- Working with people subject to statutory community-based supervision to tackle offending behaviour and its causes

- Supervising people who are required to perform unpaid, useful work for the benefit of their community
- Prison-based justice social work services to those serving custodial sentences that involve statutory supervision upon release
- Preparing reports for the Parole Board to assist decisions about release from prison
- Throughcare services including parole, supervised released and other prison aftercare to ensure public safety
- Working collaboratively with partner agencies through the MAPPA (multi-agency public protection arrangements) process for those in the community considered to present a risk to public protection

Stage 2 proposals - Consideration of JSW for inclusion in the NCS

203. The Scottish Government preference is for the consistent inclusion of JSW services within the NCS. Discussions are ongoing with key stakeholders on the options to achieve consistent inclusion and consensus on the chosen approach and underpinning policy. The Scottish Government will provide further updates at the earliest opportunity.

Children's Services

Consistent inclusion of children's social work and social care

Current landscape and challenges

204. The current landscape for delivering children's health, social work and social care services is varied and complex. The Public Bodies (Joint Working) (Scotland) Act 2014 allows flexibility for which services are delegated to Health and Social Care Partnerships (HSCPs) through for example Integration Joint Boards (IJBs). Some operate with full delegated powers, whereas some include no children's services at all.

205. Additionally, decision-making responsibility sits at local level with resourcing and thresholds varying across local authority areas. This means that the services received by children and families differ depending on where the family lives. It also means that the roles, responsibilities, workloads and experiences of the workforce can differ depending on where they work. These variations complicate transitions between services and have impact on local planning and decision-making. A more detailed overview and analysis can be found in the national report ['Improving outcomes for children, young people and families: review of Children's Services Plans \(2020-2023\) and strategic engagement activity'](#) published in July 2022.

The case for change

206. In early 2022, The Centre for Excellence for Children’s Care and Protection (CELCIS) were commissioned by the Scottish Government to carry out independent research to help answer the question: ‘What is needed to ensure that children, young people and families get the help they need, when they need it?’ This research consisted of four strands and completed with a concluding summary report in December 2023.

207. Strand 2 (Case Studies) is of particular relevance within the National Care Service context. It consists of six case studies, all of which are from high income countries broadly comparable to Scotland on population, economic and/or child wellbeing measures. The structural reforms within each study offer different models and experiences for Scotland to learn from.

208. In considering approaches to children’s services internationally, it is clear that both local and national elements are important in providing children and families with consistent, high quality support when they need it. The Strand 2 report, available [online](#), observes that across the studies:

- (a) At the national level, there was a lead government department and/or national children and family agency that set national policy and legislation, and was responsible for implementing the transformational reform programmes, working in partnership with multiple stakeholder organisations. Also at the national level were the children’s services inspectorate and children’s rights commissioner functions.
- (b) At the regional level, health services for children and adults were widely planned and delivered. At the local (authority) level, children and families’ social care services were jointly planned for, managed and increasingly commissioned; and
- (c) At the locality level, branded, multi-agency teams and hubs operated (often in co-located sites) to provide prevention and early intervention support. Services and joint working at this level were found to be most impactful on the lives of children and families, at a level where they each serve an average catchment size of 40,000 to 60,000 people.

209. Across the case studies, stakeholders asked for stronger national leadership and investment in the following areas:

- (a) national leadership in delivering on children’s health and social care needs;
- (b) national practice guidance, standards, models and tools that provide clarity to multi-agency practitioners and can support inter-agency working;
- (c) integrated IT systems that can support information sharing and recording;
- (d) national measures or indicators of children’s outcomes and a national data information system that supports consistent recording and reporting of these;
- (e) national workforce planning; and
- (f) standardisation of procurement processes and requirements.

210. IRASC concluded that structural change is necessary if the structures themselves are impeding good care and support for people. The independent research supports this conclusion as it confirms that the current

structures are varied, complex and cluttered. The independent research clearly shows that having some functions at national level, such as policy, guidance and data structures, leads to better consistency of processes and implementation of change. However, it also shows that localities are better placed to deliver the day to day care and accommodate individual needs. We need to strike the right balance between national consistency and local delivery. ca

211. Additionally, we need a systemic approach that enables us to improve outcomes in line with the ambitions of Getting It Right for Every Child (GIRFEC) and statutory aims of Children's Services Planning. A system with a focus on shifting resources and support towards prevention and early support, which delivers on the route map and principles of holistic whole family support, creates the conditions to deliver The Promise, upholds children's rights, and ensures consistent availability of high quality support across Scotland.

212. A simplified system where the impact on the workforce is a key consideration in the development and delivery of policy that affects them, would better enable those supporting children and families to deliver support whenever and wherever needed, through a whole-systems, multi-agency approach.

213. Subsequently, key considerations in deciding the future of children's social work, social care and community health services include whether the new approach is likely to create the conditions to more consistently improve outcomes for children and young people, deliver The Promise, support achievement of the key themes identified through the independent research and wider engagement activity, and more consistently support and develop the workforce.

The Promise

214. The Scottish Government has committed to Keeping the Promise by 2030. The Promise seeks to ensure that all children in Scotland feel loved, respected, listened to, and heard in decisions that affect them.

215. It is critical that the future structure of children's services supports our overall commitment to Keep the Promise. Designing and developing future approaches in true collaboration and partnership with those with lived-experience, and underpinned by the established GIRFEC principles, should be an important part of supporting delivery of The Promise. The NCS programme and its clear commitment to co-design, would seem to align well with this vision.

216. Further to this general observation, the following aspects of the proposed NCS are considered favourable in terms of improving our ability to Keep the Promise:

- (a) improved information sharing and national approach to data collection;
- (b) clearer, consistent pathways preventing 'loss in the system';
- (c) human rights based approaches to service design and delivery;
- (d) trauma informed approaches to service design and delivery;

- (e) cohesive, valued, properly resourced and supported workforces; and
- (f) move towards preventive early intervention.

Stage 2 proposals - Consideration of children's services for inclusion in the NCS

217. The NCS Bill, as introduced, includes a power to transfer children's social care and social work services to a future NCS, but provides that a further public consultation must be undertaken. We propose to remove these provisions at Stage 2 as they relate to the transfer of functions, which alongside staff and assets are now being retained by local authorities.

218. As set out at Stage 1, the Scottish Government has a preference for the consistent inclusion of children's services within the NCS. The detail of how this policy can best be implemented is still subject to ongoing work and engagement with stakeholders. The Scottish Government remains committed to providing further updates at the earliest opportunity.

Alcohol and Drugs Support

219. Integration Authorities currently have responsibility for directing and commissioning alcohol and drugs support for people and their families, as part of their responsibility for adult health and social care. Alcohol and Drugs Partnerships are currently co-ordinated by IJBs, and including alcohol and drugs provisions in the NCS was widely supported in the consultation. Any specific reforms as to how these services would be delivered would follow on from further engagement with stakeholders and take account of all relevant strategic planning requirements.

220. The harms caused by problem use of alcohol and drugs, and the significant increase recently in drug-related deaths require significant improvements in the support being made available to people. The First Minister launched a National Mission for drugs in 2021 – to save and improve lives. The mission is driving improvement and expansion of services to help more people receive the protective support, treatment and recovery they require and when they ask for it, and to ensure they have support as long as they need it.

221. The creation of the NCS provides an opportunity to reform how services are provided and commissioned – to help deliver on the National Mission and to save and improve lives.

222. People impacted by alcohol and drugs often have wider needs including mental health needs and are more likely to be in contact with justice services. Meeting these multiple, complex needs will be easier through an integrated care service rather than through multiple separate services. Reducing restrictions around information sharing and removing transitions between services will have clear benefits for people and for those who provide support.

223. The Scottish Government is already taking action to make people's experiences, service standards and pathways into care more consistent across the country – on initiatives such as residential rehabilitation to support recovery, and medication assisted treatment standards for those in harm reduction care. The creation of NCS will further improve consistency in the care to which people impacted by alcohol and drugs already have a right.

224. The National Mission for drugs now includes a human-rights based national collaborative to listen to and use the voices of those people with lived and living experience to help drive service improvement. Those voices will help reshape the way services are delivered through the NCS.

Homelessness

225. Schedule 3 in the Bill as Introduced does not include the Housing (Scotland) Acts of 1987, 2001 or 2006, which are included in the functions which can be delegated to Integration Authorities on a voluntary basis under the 2014 act. Functions in relation to homelessness have been delegated in very few areas, and are considered to fit more appropriately with housing functions. It is recognised, however, that the NCS will need to work closely with housing and homelessness services to ensure people's needs are met.

226. The Housing (Scotland) Bill was introduced to the Scottish Parliament in March 2024 and includes provisions that 'relevant bodies', which are named in the Bill, and include health boards, special health boards and integrated joint boards, are required to 'ask and act' to help prevent homelessness. A power has been taken to update the relevant bodies list as required and so, if agreed to by Parliament, it is expected that the NCS will need to be considered for inclusion. The introduction of homelessness prevention duties is based on the principle of shared public responsibility to prevent homelessness and is an action included in the Scottish Government/Cosla Ending Homelessness Together action plan¹⁴.

Public Protection

227. Within Scotland there is no legal definition of public protection. As such it will not be named separately on the face of the Bill. It is envisaged that the National Care Service Board will have an assurance function for those areas of public protection that sit under its remit. A more nuanced approach will be required for public protection as key protection partners, such as Police Scotland, sit outside the NCS. It is proposed that a National Public Protection Leadership Group will be established to address a gap in national multi-agency leadership of public protection. There is real optimism amongst stakeholders that it will provide a space for local and national protection leaders to bring vision and coherence to

¹⁴ [Ending homelessness together: updated action plan - October 2020 - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/ending-homelessness-together/updated-action-plan-2020/pages/10)

the public protection landscape, and to help drive continuous improvement across public protection areas. Further consideration is to be given to how this group will work with the NCSB.

PART 2: HEALTH AND SOCIAL CARE INFORMATION

Background

228. Part 2 of the Bill, as Introduced, relates to health and social care information for both the NCS and the NHS, and contains two provisions: section 36 (Information Sharing) and section 37 (Information standard). These provisions will be critical in the Scottish Government's support of data and digital infrastructure across health and social care in Scotland going forward.

229. The IRASC recommended that the NCS should address gaps in national provision for social care and social work in relation to workforce planning, data and research, IT and (as appropriate) service planning, and had a specific recommendation on how "Improved data and digital infrastructure are critical to helping people live fulfilling, independent lives; enabling professionals to support those people; facilitate ethical and collaborative commissioning; underpin regulation and improvement programmes; support workforce planning; and facilitate research and intelligence." Many of the other recommendations set out in IRASC are premised on the need for good quality data and digital infrastructure.

230. The findings of IRASC complimented similar findings across multiple reviews of different aspects of health and social care, including by the Scottish Parliament in their enquiry into '[Technology and Innovation in Health & Social Care](#)'.

231. This aligns with the Scottish Government's ambition to alleviate any digital constraints which hinder those providing care from working more collaboratively, and enable safe information sharing between services to meet the rising demand on Scotland's social care and health system. These ambitions have featured in a number of Scottish Government e-Health and Digital Health and Care strategies, and are central to the current [Digital Health and Care](#) and [Data Strategy](#).

Policy Objectives in Bill as Introduced

232. Recognising the need, therefore, to improve how information is used across both social care *and* health, Part 2 of the Bill as Introduced is applicable to both the NHS and NCS, and extends to organisations commissioned to provide services on behalf of the NHS or NCS (e.g. primary care providers, third and independent sector care providers).

233. Section 36 of the Bill as Introduced sets out the power for Scottish Ministers, by way of regulations, to establish a scheme for sharing information for the purpose of the efficient and effective provision of services by, and on behalf of, the NCS and the NHS. This scope is seeking to be amended, as is explained under Stage 2 Amendments. This will allow safe, secure and efficient sharing of social care and health data across relevant settings, including with the individual. It will also ensure up-to-date information is available to those who support and provide care.

234. The principal policy driver behind section 36 has been the desire to create a scheme that allows for the direction of what information should be shared for what purpose, removing the uncertainty that persists within some organisations as to whether they were allowed to share certain information or not. Part of the intention behind this was to reduce the friction experienced by people accessing services, who often have to repeat their story over and over again due to professionals not having access to previously captured information.

235. There is an associated ‘integrated health and social care record’ technical development which will benefit from this provision by making it easier to specify what information should be fed into the ‘record’ by what organisation. However, the Scottish Government considers the scope of section 36(1) as it stands to be broader than this. For the avoidance of doubt this provision will not in itself legislate for the creation of an ‘integrated health and social care record’, as the provisions will have far wider utility than the Integrated Social Care and Health Record. This provision is about information sharing to improve the delivery of care in its broadest sense, not about the creation of any particular technology or product (e.g. an integrated record). While sharing of information for the purposes of creating an Integrated Social Care and Health Record may be one example, there may be others such as the sharing of ‘management’ information, which may come about from this process, and the sharing of information within services (e.g. GP data with hospitals).

236. This provision will work alongside reserved data protection legislation to better empower professionals in the health and social care sector to confidently share data in a safe way. Additionally, it is provided that the regulations can create sanctions, both criminal and civil, for those who fail to comply with the regulations’ requirements. Through work on secondary legislation the Scottish Government will develop further assessments of the data protection impacts and specifics of data controller responsibilities.

237. Section 37 of the Bill as Introduced will give the Scottish Ministers the power to set information standards, (covering data and digital) which will set out how certain information is to be processed, and for what purpose and this will be made publicly available. Setting out standards in this way will allow technical detail to be included and to be updated more flexibly as required compared to setting the standards themselves in legislation. Setting information standards is important to improve equality for service users, and also to improve the quality of data used for secondary purposes such as national and regional oversight,

planning, commissioning and procurement, regulation, research and national reporting, including through collection of official statistics.

238. Section 37 is broadly equivalent to [s250 of the Health & Social Care Act 2012](#), which applies to Health and Adult Social Care services in England.

239. It is envisaged this definition could apply to:

- record standards - which specify what data should go into a record e.g. what data items should be in an information sharing scheme;
- terminology standards - which specify definitions and vocabularies e.g. how should different types of social care services be defined and categorised so that we are all using consistent definitions;
- classification standards - which specify how data should be used to make decisions;
- technical standards - which specify how data should be stored and exchanged between systems for example in an application programming interface (API);
- information codes of practice – which set out the legal basis for how data should be handled

240. Scottish Ministers will be required to make any information standard they produce publicly available. Scottish Ministers may also withdraw an information standard.

Consultation

241. The NCS consultation built on the comments in the IRASC around the importance of data. It proposed creating an integrated social care and health record which would not replace existing medical or well-functioning systems, but would instead deliver a platform to bring this fragmented information together to improve outcomes for individuals.

242. The consultation also set out the need for health and social care professionals to have access to good quality, relevant and accessible data in an agreed format with nationally-agreed definitions. To achieve this, the consultation proposed introducing legislation to require all primary and community health care and social care providers to provide data to the NCS.

243. On a national level, the consultation proposed introducing legislation that would allow the NCS to fill the data gaps identified in the IRASC in relation to local and national decision making and to introduce a requirement to meet common data standards with those standards set out in guidance.

244. There was strong support for the proposals in the consultation; the large majority of respondents (80-90% in all cases) agreed. The proposals were:

- There should be a nationally-consistent, integrated and accessible electronic social care and health record
- Information about your health and care needs should be shared across the services that support you.

245. There was also strong support (again 80-90% agreement) to the question of whether legislation should be used to require all care services and other relevant parties to provide data as specified by the NCS, and to include the requirement to meet common data standards and definitions for that data collection.

246. While there was support for the data and digital proposals in the legislation, there were concerns raised around achieving the right balance between sharing data and protecting people's data; the security of information; and the feasibility of a national IT system. All the Scottish Government's work will be fully compliant with UK GDPR (General Data Protection Regulation) and the Data Protection Act 2018. The Scottish Government will build in cyber security requirements to the new system and is focussed on the delivery of a new digital service.

247. In addition, a consultation was undertaken for the Data Strategy for Health and Social Care, which ran between 16 May and 12 August 2022 and received 162 responses. 88% of respondents were supportive of mandating information standards for the purpose of gathering, storing and accessing data at a national level. Respondents felt that use of standards would improve data quality and drive-up interoperability.

248. Respondents were also supportive of data sharing and suggested a national, interoperable, central system would be key to removing barriers to data sharing. 76% of respondents felt that better sharing of data across health and social care could result in better quality services where practitioners could meet the needs of service users more fully through more holistic and timely sharing of data. However, some respondents did state that they would be uncomfortable with the sharing of some data such as sexual health and mental health data.

Stage 2 Amendments

249. At present, information sharing across children's and justice services is not currently standardised throughout Scotland and therefore, it is anticipated that without including these services as part of the integrated scheme, inconsistencies may perpetuate.

250. For children's services, the independent research commissioned by the Scottish Government identified a number of inherent inconsistencies in the current digital systems and barriers to effective information sharing, including:

- (a) Unavailability of data preventing development of meaningful support plans and packages within the context of one's family environment;
- (b) Loss of data during transitions into adult services and when moving across local authorities; and
- (c) Increased likelihood for operational errors and data protection breaches.

251. The importance of effective digital solutions can be helpfully illustrated within the child protection context:

- (a) The 2017 Child Protection Systems Review included a recommendation to explore the development of a national register to improve decision making and risk assessment, particularly when children move between local authority areas and in circumstances which arise outwith local authority office hours. To date only an interim solution has been put in place through a child protection flag on Police Scotland's Vulnerable Persons Database.
- (b) Inter-agency Referral Discussions (IRDs) are the start of the formal inter-agency process to discuss concerns and next steps where there is a risk of significant harm involving as a minimum police, social work and health. A lack of interoperability across IT systems is a current barrier to more effective IRD practice.
- (c) A chronology is a tool used by agencies that support children to inform understanding of need and risk. It is a summary of key events extracted from comprehensive case records and organised in date order. Chronologies may be single or multi-agency, with the latter being a vital tool for child protection processes. Collation of a multi-agency chronology involves piecing together separate single-agency chronologies, often from various IT systems that do not speak to each other making it a time-intensive task.

252. Therefore the Scottish Government seeks to amend section 36(1) so that the provisions enable information to be shared in order that public health and social care services can be provided efficiently and effectively. A "public health and social care service" is defined by reference to a) functions conferred by virtue of an enactment listed in the schedule of the Public Bodies (Joint Working) (Scotland) Act 2014 or b) functions exercisable by a health board or a special health board. This means that a scheme can be made to allow information to be shared so long as its purpose is enabling the efficient and effective delivery of public health and social care services (as defined) and this could include information shared by the National Care Service Board, NHS and Local Authorities, alongside other people involved in an individual's cares, the third sector or private sector. .

253. In addition the effect of section 37, as Introduced, is that only those who come within the scope of the NCS, NHS and their providers (i.e independent, third sector) will be required to comply with the information standard produced by Scottish Ministers. Wider organisations who may share data, for example, in contributing to the information sharing schemes and management information other public sector organisations who interact with vulnerable people who may either benefit from accessing limited health and social care information, or where health, social work and/or social care professionals may benefit from accessing relevant information from those other public sector organisations would not be

covered. Such organisations are not part of the NCS or NHS nor do they carry out services on behalf of the NHS or NCS by way of a contractual or other agreement for the provision of services. It is therefore imperative that wider bodies are required to follow established information standards.

254. Therefore, it is the intention of the Scottish Government to amend section 37 of the Bill to include a power for Scottish Ministers to modify the list of persons included in section 37(4) of the Bill only for the purpose of promoting the efficient and effective provision of a public health and social care service as defined in section 36(3). This will ensure relevant organisations will be required to follow the information standard set out by Scottish Ministers.

Alternative Approaches

255. An alternative option to a new regulation making power to create a scheme that allows information to be shared would be to rely on existing powers to share data between organisations.

256. A significant volume of data sharing is already undertaken, including for example the sharing of personal data between primary medical services and emergency responders. Sharing of information takes place within social care (between GPs and social care teams, and local authorities, service providers and the Care Inspectorate), however this is inconsistent and fragmented in practice.

257. It is also the case that although in many scenarios there may be an acceptable legal basis for sharing information, the risk of a sanction for incorrectly sharing data causes individuals and organisations to act with undue caution. The proposed power to create a new legal gateway for sharing information is anticipated to give greater confidence to those sharing data and allow for certainty and consistency. It will also underpin the sharing of information that will be required to create an integrated social care and health record, alongside the variety of other reasons by which data could be shared for the effective and efficient provision of public health and social services.

258. An alternative approach to the proposed setting out of information standards in secondary legislation would be to set out details via primary legislation. This approach was not progressed as this would be too inflexible as practices, policies and technologies evolve in ways that will need regular changes and updates to the standards.

PART 3: REFORMS CONNECTED TO DELIVERY AND REGULATION OF CARE

259. Part 3 of the Bill as Introduced contains various reforms connected to delivery and regulation of care, including:

- Rights to breaks for carers
- Visits to or by care home residents (“Anne’s Law”)
- Regulation of social services.

Rights to Breaks for Carers

260. Section 38 of the Bill makes changes to the Carers (Scotland) Act 2016 to deliver a right to personalised short breaks support for carers who need it. The Scottish Government is not proposing any changes to the provisions under this section at Stage 2 . Existing powers can be used for Ministers to maintain a national short breaks fund to enable easy-access support for people in less intensive caring roles.

261. Scotland’s health and social care systems rely heavily on the input of unpaid carers. The number of unpaid carers is estimated to be between 700,000 – 800,000. The latest figures, based on Scottish Health Survey, suggest that there are 696,000 carers, including 28,000 young carers¹⁵.

262. Breaks from caring are a vital element of the support many unpaid carers need to cope with their caring role and look after their own health and wellbeing. Breaks can take many forms and should benefit both the carer and cared-for person.

263. Unpaid carers already have rights under the Carers (Scotland) Act 2016 to a personalised plan to identify what is important to them and their needs for support. Carers also have the right to support to meet their eligible needs and authorities must consider whether that support should include a break from caring.

264. Despite the above rights, relatively few unpaid carers (around 4%¹⁶) receive statutory support for breaks from caring.

265. The IRASC reported that, “Access to respite came up repeatedly as a priority. Carers need to be able to take a break and respite should be viewed as integral to carer support.” It recommended that, “Carers need better, more consistent support to carry out their caring role well and to take a break from caring with regular access to quality respite provision. Carers should be given a right to respite with an amendment to the Carers (Scotland) Act 2016 as required, and a range of options for respite and short breaks should be developed.” The Scottish Government agrees with that assessment.

266. The NCS consultation asked consultees which elements they considered most important in shaping a right to breaks. The elements considered included flexibility, certainty, meeting acute need, providing preventative support,

¹⁵ Scotland’s Carers Update Release March, Scottish Government, 2024: www.gov.scot/publications/scotlands-carers-update-release-march-2024/

¹⁶ Scottish Health Survey, 2018-2022 (combined), Scottish Government: www.gov.scot/collections/scottish-health-survey

personalising support, guaranteeing standard entitlements, ensuring universal rights or creating rights based on the intensity of caring roles.

267. The consultation then asked about several options (alternative approaches) for establishing a right to breaks, each of which would deliver a different balance between these elements. The options included:

- standardised entitlements to a flat rate breaks package or graded packages linked to intensity of caring
- rights to personalised support, built into the existing Carers (Scotland) Act 2016 system for carers not otherwise able to access sufficient rest and breaks from caring, or
- a hybrid approach combining the above, enabling easy-access support for carers with low levels of need and the option of personalised breaks support under the Carers (Scotland) Act 2016 for those in more intensive caring roles.

268. Consultation responses showed clear support both for establishing a right to breaks from caring and for the hybrid approach outlined above. Respondents valued personalised support and the option of easy-access support for those with less significant needs.

Visiting Care Home Residents (“Anne’s Law”s

269. During the Coronavirus pandemic, some care home residents were unable to see their loved ones for extended periods of time. Meaningful social contact was severely curtailed, and this caused anguish for many residents, families and friends. Social connections and meaningful activity are vital for the wellbeing and quality of life for people living in care homes. For many residents, family members or friends play a vital role in their care, complementing the support provided by care home staff. It is widely acknowledged, including in academic research, that restrictions on visits significantly impacted the health and wellbeing of people living in care homes and their friends and family. Link: [“The Cost of Separation: The Impact of Visiting Restrictions on Families of Care Residents during COVID-19”](#)

270. The development of “Anne’s Law” followed a petition to the Scottish Parliament on behalf of Care Home Relatives Scotland (Petition [PE1841](#): Allow a designated visitor into care homes). This petition was lodged by Natasha Hamilton, who was unable to see her mother, Anne Duke, now deceased, for prolonged periods during the height of the pandemic.

271. The Scottish Government is committed to ensuring that people remain connected to their loved ones even in outbreak situations and initiated a programme of work to ensure that this is reflected in policy and practice. This began with updates to guidance advising that residents should be able to see named people in outbreak situations in addition to existing advice that essential visits for end of life or distress should always be supported. In April 2022, the Scottish Government utilised existing powers and introduced two new health and

social care standards on visiting. These standards, which are used as a basis for inspection by the Care Inspectorate, set out the expectation that people living in care homes should be able to see someone who is important to them, even during a Covid-19 outbreak, and be able to name a person or persons who can directly participate in meeting their care needs.

272. To embed this approach within legislation, “Anne’s Law” visiting provisions are reflected in section 40 of the National Care Service (Scotland) Bill. Section 40 of the Bill, as Introduced, sets out that the Scottish Ministers will have a power to require providers of care home services to comply with any direction Ministers make about visits to or by residents of care home accommodation. A direction of this nature is referred to as a “visiting direction” in the Bill. The Bill also provides that Ministers must consult with Public Health Scotland and any other person Ministers consider appropriate before issuing a visiting direction and that Ministers will have powers to vary or revoke a visiting direction.

273. There is widespread support for Anne’s Law among stakeholders. However, some individuals and groups have expressed concern that section 40, as introduced, does not explicitly reflect the core aims of Anne’s Law. Furthermore they have indicated that the direction-making powers in and of themselves appear to give powers to Ministers but not to residents and visitors and there is concern that Ministers could revoke visiting arrangements at any time.

274. The Scottish Government remains committed to delivering Anne’s Law within the Bill. We acknowledge the suggestions at Stage 1 that Anne’s Law could be delivered in a different way, and we are using this feedback to consider further ways in which Anne’s Law can be enhanced. Work will continue to determine whether any alternative route is available to deliver Anne’s Law more quickly and that is in keeping with its aim.

Reserving Contracts for Voluntary Organisations

275. The Public Contracts (Scotland) Regulations 2015 were made to implement Directive 2014/24/EU of the European Parliament and of the Council on public procurement. They impose obligations on public bodies in relation to how they award public contracts for the execution of works, the supply of products and the provision of services.

276. Section 41 of the Bill as Introduced amends the 2015 Regulations to insert a new regulation. This will allow, in certain circumstances, the list of bidders for a contract to be limited to those who meet a particular description.

277. Article 77 of the founding EU procurement directive (2014/24/EU) enables contracting authorities to reserve contracts for mutual organisations. At the time of transposing the procurement directives into Scottish law in 2015, this article was not included as public consultation responses did not identify any particular advantage or reason for doing so in Scotland.

278. Voluntary, third sector organisations and social enterprises are a significant part of the social care market, and have a history and expertise in providing community health and social care services and support. The Scottish Government recognises the role this part of the social care market can offer alongside other sectors in supporting the NCS ambitions, and therefore see merits in providing the option to contracting authorities to reserve procurement processes to these organisations when contracting for national care services..

279. It is only possible through transposing these legislative provisions, to limit invitations to bid; to do so otherwise would be discriminatory.

Consultation

280. The Scottish Government sought stakeholders' views on reserving contracts for mutual organisations when consulting on the transposition of the 2014 European procurement Directives in 2015. The largest number of responses to the consultation were undecided, and 28 [of 140] respondents saw advantages in implementing this proposal.

At the time of transposing the procurement Directives in 2015, the Scottish Government were not aware of any particular advantage or reason for doing it in Scotland. However third sector, and social enterprise organisations are part of the social care market, and with expertise in providing community health and social care services and support, the Scottish Government are keen to grow this and other sectors of the social care market.

Stage 2 amendments

281. During Stage 1 of the NCS Bill, stakeholders gave feedback to the Scottish Government that the definition of qualifying organisation was too strict and would mean many third sector organisations would miss out on contract opportunities. We also heard that the limit on the number of contract years and number of concurrent contracts, that can be awarded through the reserved process, would act as a barrier to third sector organisations. In addition to this, we consider that the cap will limit the ability to respond to the challenge of short-term contracts highlighted in the IRASC.

282. Subsequently, by making an amendment to the Bill at Stage 2, we plan to change the definition of qualifying organisation and remove the limit of number of recurrent contracts and contract years. Further engagement with stakeholder groups is required to develop the definition, however following initial feedback and desk research, the current working definition is:

- organisations (other than bodies established under an enactment) that exist wholly or mainly to provide benefits for society or the environment.

- all the money they generate is reinvested in that social purpose or in the beneficiary community and no dividends are provided to independent shareholders.

283. We intend to finalise this definition before lodging the final amendment formally for Stage 2, subject to stakeholder views.

Regulation of Social Services - Care Inspectorate Enforcement and Related Powers

284. Sections 42 and 43 in the Bill as Introduced make the following provision related to the Care Inspectorate (CI), as the independent regulator and scrutiny body for social care services:

- To set out further criteria to determine when the CI might propose to cancel a service's registration, including on the basis of previous enforcement action
- Additional powers to enable the Healthcare Improvement Scotland (HIS) to provide assistance to CI in carrying out an inspection.

285. The Scottish Government does not intend to amend these sections of the Bill at Stage 2.

286. Regulation plays an important role in ensuring consistent and high standards of social care. The CI will continue to provide independent scrutiny of social care services as the NCS is developed. A number of proposals have been made in recent years to enhance and strengthen the CI's powers currently available under the Public Services Reform (Scotland) Act 2010 ("the 2010 Act") to enable the regulator to speedily take action with poor performing services, better protect social care users, and drive up the consistency and quality of care expected across all social care services in Scotland.

287. A key issue with the current regime relates to resolving the issue of providers who operate, often for lengthy periods, with inconsistent quality and levels of service. At present providers who fail to meet the required standards could be issued with an improvement notice. This allows the provider a set amount of time to meet the requirements as detailed in the improvement notice. A failure to do so could result in escalation and a move by the CI to make an application to cancel the care service's registration.

288. In actual practice, where an improvement notice has been issued requiring significant improvement within a specified timescale, certain providers act to implement only the bare minimum and maintain this for only a very short time, i.e. during inspection. That is not the intention of the improvement notice process, which aims to bring the relevant care service back up to the expected standard it is required to maintain throughout the lifetime of the registration. As it stands, there is a continual duty under legislation for care service providers to provide a quality service. However, the CI's current powers and the improvement notice process appears to have little effect for repeat offender providers.

289. Although the CI, in certain circumstances, may propose to cancel a registered service once the required timescale for improvement has passed, that proves difficult in the face of providers who claim to be attempting improvement, offer mitigation as to why quality has not been maintained, or challenge the assessment. The result of this scenario is providers maintaining a registration based on fluctuating levels of service quality, which is unsatisfactory.

290. Section 42 is intended to achieve that in cases where it is the professional judgement of the CI that the service/provider is not in a position to meet and sustain the requirements of an improvement notice, the CI will have the power to forgo the issue of an improvement notice. It would instead make an application to the Sheriff Court to cancel the registration, saving time and resource and achieving the desired and best outcome for users of the service more quickly. The basis on which it reaches this view regarding the provider may include criteria such as the fitness of the provider or past performance.

291. The new powers provided by section 42 would mean that the CI can act more effectively and more quickly than at present to tackle consistently poorly performing and inadequate care services. This is particularly important where it is thought that there may be a risk to life, health or wellbeing of residents if inadequate care services continue to be provided and will help the CI ensure that these individuals receive good quality of care.

292. Section 43 introduces a new power (under the Public Services Reform (Scotland) Act 2010) for HIS to provide assistance to CI in carrying out an inspection.

293. During the pandemic, a “joint arrangement” way of working was established between the CI and HIS connected to the functions that the CI carries out under Part 5 of the 2010 Act. Staff from HIS were seconded to CI with the objective of assisting the CI with the clinical aspects of inspections of care homes (e.g. infection prevention and control) under Part 5 of the 2010 Act. This provided increased additional capacity to the CI during the pandemic. We understand that HIS staff participated in around 30% of CI inspections of care homes in this time.

294. However, an issue arose during the pandemic in relation to “joint working” on inspections which created uncertainty around the legal basis for continuing with these arrangements. One interpretation was that the CI was only able to authorise its Chief Executive Officer, employees or committees to carry out its inspection functions. This new power is being introduced to address any perceived risk around the legal basis on which HIS could assist CI with inspections.

295. Whilst pandemic related issues in care homes have become less acute in contrast to circumstances presented during the pandemic, it is nevertheless important that CI and HIS have no impediments to collaborative working should the need arise in future.

Consultation

296. The consultation included proposals to strengthen the regulation and scrutiny of care services, including enhancing the regulator's enforcement powers. Responses from stakeholders to the consultation were strongly supportive of the enhanced enforcement powers to the CI.

297. The vast majority (88%), were supportive of the proposals for enhanced enforcement powers for the regulator. Additional enforcement powers that were suggested in the consultation responses included the ability for the regulator to effectively bar providers with previous poor performance as evidenced in their regulatory history, including those that voluntarily cancel their registration and reopen under a different entity.

Alternative approaches

298. An alternative legislative approach that was considered to strengthen regulation and scrutiny of care services was to use secondary legislation powers currently available to the Care Inspectorate under the 2010 Act.

299. However, with regards to enforcement, this approach would have been limited in scope, and to make the fundamental changes required to strengthen the CI's enforcement regime, primary legislation is required.

EFFECTS ON EQUAL OPPORTUNITIES, HUMAN RIGHTS, ISLAND COMMUNITIES, LOCAL GOVERNMENT, SUSTAINABLE DEVELOPMENT ETC.

300. A suite of Impact Assessments were drafted for the Bill as Introduced and published on the Scottish Government website. Due to the framework and co-design approach to establishing the NCS, the process of impact assessment will continue throughout the programme, seeking to identify and avoid or mitigate any negative impacts that may arise as more detailed proposals are developed. Where secondary legislation is brought forward under the Bill it will be accompanied by that more detailed impact assessment.

Equal Opportunities

301. An Equality Impact Assessment (EQIA) has been carried out in respect of the proposals contained in the Bill as Introduced. It identified that the Bill could have a positive impact on the protected characteristics (age, disability, etc.), given that stakeholders will be co-designing the service that affects them (via user research and other means) on how the provision of advice, support planning and models of care will be delivered in practical terms. For example, as regards the age protected characteristic, the duty to provide advice and the right to a conversation about a person's social care support needs will help to ensure that people of all ages have the ability to access support that is suited to their individual needs and circumstances.

302. The EQIA also identified the barriers that currently exist for stakeholders in accessing social services. For example, people from several characteristics (disabilities, sex, sexual orientation) report discrimination when accessing social care or obtaining information in accessible formats. In respect of race, some people from minority ethnic groups have reported that they are not always fully informed of their options and are often unable to access information in their first language. This also applies to ethnic minority carers, who may not be able to access support or information in their first language.

303. User research will be undertaken with people to ensure policies address discrimination and other issues, to gain a greater understanding of their needs and barriers to social services, and to design advice and support planning processes that best meet their needs (for example, exploring issues that predominantly impact on women (e.g. domestic abuse)).

304. There is not currently sufficient evidence available to assess whether or not policies would have any impacts on the protected characteristics of pregnancy and maternity, and religion or belief. Further work will be undertaken to determine if there are any impacts on these groups as part of the programme of engagement and user research.

Fairer Scotland Assessment

305. While there are gaps in the evidence around the socio-economic factors relating to social care, over a quarter of the people in receipt of social care support live in the most deprived areas of the country; furthermore, people living in the most deprived areas are more likely not to be receiving support even when they believe they need it. People living in the most deprived areas are more likely to experience adverse childhood experiences, and unpaid carers living in the most deprived areas are more likely to care for longer periods of time.

306. These factors suggest that improvements to the way social care is delivered, and the introduction of a right to more personalised short breaks support for carers, are likely to benefit groups experiencing poverty and deprivation. Establishment of the NCS will result in Scottish Ministers being accountable for the delivery of social care across Scotland. The Scottish Government will set standards and frameworks at a national level. This will address the perception of a 'postcode lottery' that currently exists by ensuring that they are put into practice through performance monitoring and improvement.

307. The NCS Bill will have a positive impact on low income staff in the sector by enabling Scottish Ministers to ensure that Fair Work is embedded into the NCS as a founding principle. Throughout the creation of the NCS, the Scottish Government will actively engage with stakeholders to ensure that people with lived experience of poverty and disadvantage are included in the process. It is vital that their voices are heard as the Scottish Government develops policy.

Child Rights and Wellbeing

308. There are indications that the creation of a NCS will have positive impacts on children's rights. Policies supporting the NCS will be developed through co-design with diverse voices with lived or living experience of all ages. The Scottish Government will also engage with stakeholders, representing children, to ensure that the needs of children are met and that they are not impacted adversely.

309. Early work indicates that the inclusion of children's services in the NCS would have a positive impact on children's rights. In particular, it will ensure services are (or remain) integrated and are able to benefit from improvement work on quality and consistency led at the national level.

310. In addition to this, the proposed approach to the design of, and the principles of, the NCS can already be assessed as ensuring that the NCS will take a rights-based approach, which would have a positive impact on children's rights should the decision be taken, following the further research and engagement work that is planned, to include children's services.

311. In Scotland there are an estimated 700,000 to 800,000 carers, including approximately 29,000 young carers. The provision of a right to breaks for carers will allow for young carers to have time away from their caring role to focus on other activities and education. As many caring relationships are intergenerational, positive impacts of a NCS on adults is likely to have a positive impact on the children who care for them.

Human Rights

312. The Bill's provisions are compatible with rights under the European Convention on Human Rights (ECHR). As described in more detail through the Policy Memorandum, it is intended that the NCS will support a more rights based and person-centred approach to social care, which is embedded in the NCS Charter and principles.

Island Communities

313. The NCS consultation included 3 public engagement sessions aimed specifically at island communities, and 2 meetings with local authorities with island communities. Further engagement included meetings with the Island Assessment Impact Group, which was formed to specifically consider the impact on islands, and engagement with the National Islands Delivery Plan Group and the Islands Strategic Group.

314. In relation to island communities, the consultation responses highlighted a number of concerns, such as the need for flexibility to account for specific island and rural communities when developing a national approach to social care, and barriers to accessing social care for island communities such as transport limitations and small and dispersed populations. The engagement of

island communities will continue throughout the co-design process of the NCS to ensure island communities are part of the co-design process, and responses will be made to the NCS design accordingly.

315. An Island Communities Impact Assessment (ICIA)¹⁷ has been conducted on the NCS (Scotland) Bill, in accordance with the requirements on the Scottish Government in the Islands (Scotland) Act 2018. It has concluded that establishing the National Care Service will bring positive benefits to people in the social care and community health system by providing the means to address the inconsistency of people's experience of care, lead on improvement, establish consistent and clear governance arrangements, and provide for national oversight and strategic leadership of social care. The ICIA process has demonstrated that the Bill and the framework it puts in place to establish the NCS is designed to ensure the benefits of the reforms are realised for those in island communities and to account for and mitigate any potential adverse impacts, in particular by providing the flexibility and scope for co-design and further engagement with people with lived experience and with input from delivery partners and key stakeholders.

316. An NCS Island Engagement Group has been established to help the Scottish Government identify and meet the needs of Scotland's island communities and ensure that is reflected within the design and delivery of the NCS. The group consists of Integration Authority Chief Officers and NHS and Local Authority Chief Executives from all areas with island communities. Given the changes to the mechanisms for delivering the NCS since the Bill was introduced due to the shared accountability agreement, The Scottish Government is committed to updating the ICIA. The Island Engagement Group will support the development of the updated ICIA to ensure the impact of the NCS on island communities is fully considered.

Local Government

317. The Bill will affect local government in Scotland, primarily through the creation of the NCS Board and the new national shared accountability for social care and social work. The nature of the impact on local government from the establishment of the NCS will depend on decisions about scope of the NCS Board and its interaction with NCS Local Boards. It is not possible to fully quantify these impacts until decisions are taken on what services are to be included in the NCS. The Scottish Government will work with COSLA and SOLACE? to identify the implications at the appropriate time, and further impact assessment information will be developed alongside the relevant secondary legislation.

Sustainable Development

318. The Bill has no negative effect on sustainable development. The establishment of the NCS will create opportunities to enhance the way in which

¹⁷ The ICIA and EQIA will be published on the same date as the Bill and accompanying documents, and available on the Scottish Government's website.

services are designed and delivered to meet objectives beyond immediate care priorities, including on sustainable development, climate resilience, and Net Zero. As statutory responsibility for social care is transferred to the Scottish Ministers and put into practice through the NCS, there will be greater scope to ensure that the Scottish Government work on climate and environmental priorities (including biodiversity and greenspace) is incorporated to ensure a joined-up and consistent approach. New working practices and policy mechanisms in the NCS (for example, Ministerial oversight of local care boards and the strategies for ethical commissioning and procurement) will provide means to build climate resilience and Net Zero actions into the social care system, providing a basis on which the Scottish Government can work with social care providers to identify and put into practice actions to combat the climate crisis and achieve wider environmental objectives. Examples could include areas such as heating, transportation, food and waste management.

319. Formal pre-screening to consider whether a Strategic Environmental Assessment is required will take place following introduction of the Bill. At present it is anticipated that the Bill will have minimal environmental effects.