Finance and Public Administration Committee

26th meeting 2022 (Session 6), Tuesday 25 October 2022

National Care Service (Scotland) Bill: Financial Memorandum - Themes paper

Background

The National Care Service (Scotland) Bill ('the Bill'), was introduced on 20 June 2022. The stated purpose of the Bill is to improve the quality and consistency of social services in Scotland. The Financial Memorandum outlining the estimated costs of the proposed legislative changes was published alongside the Bill

In order to inform its scrutiny of the Financial Memorandum (FM) accompanying the National Care Service (Scotland) Bill, the Finance and Public Administration Committee included a number of specific questions in the general call for views on the Bill. A separate paper summarises responses to the call for views, although some points are also highlighted in this paper.

SPICe has also published a briefing on the Bill, which includes a detailed section on the FM. This paper draws on the material included in the briefing, while also reflecting some of the broad issues raised in responses to the call for views.

What costs does the Financial memorandum cover?

Estimated costs are set out in relation to the various aspects of the Bill as follows:

- establishment of a National Care Service
- establishment of Care Boards
- health and social care information
- right to breaks from caring
- “Anne’s Law” – visits to or by care home residents

- changes to powers and functions of the Care Inspectorate.

In line with standard practice for FMs, the costs are set out separately in relation to:

- The Scottish Administration
- Local Authorities
- Health Boards
- Other public bodies
- Businesses and third sector organisations
- Individuals.

It is important to note that the purpose of an FM is to provide costs relating to the implementation of the associated legislation. An FM is not intended to consider the wider policy environment in which the Bill sits; it is only intended to consider the direct costs of the proposed legislation.

The Scottish Government has a programme of health and social care reform that includes a range of measures that are not covered by this Bill and, as such, do not feature in the costings. As explained in the FM, commitments that are not covered by the Bill's provisions (and so are not covered by the FM) include:

- To increase pay and improve terms and conditions for adult social care staff in commissioned services.
- To bring Free Personal Nursing Care rates in line with National Care Home Contract rates.
- To remove charging for non-residential care.
- To increase investment in social work services.
- To increase provision of services focusing on early intervention and prevention.
- To invest in data and digital solutions to improve social care support.

These measures do not require primary legislation. The FM notes that:

> " these are policy decisions to be made or sustained under the new framework, not necessary consequences of the Bill provisions."

As such, the FM reflects the costs associated with the primary legislation that has been introduced. This specific focus on the legislative proposals, rather than the broader policy context was the subject of some frustration among those responding to the call for views, who felt that a broader perspective should have been reflected in the FM. (See separate paper summarising call for views.) However, in relation to

Standing Orders and associated guidance (see clerks cover paper), the FM is not required to reflect broader policy intent.

The “framework” nature of the legislation introduced also raised some concerns for those responding to the call for views. The Bill documentation indicates a number of areas where further changes and decisions will be implemented via secondary legislation. Some major decisions on the proposed delivery arrangements have yet to be taken and the Scottish Government has said that these will be agreed through consultation with those affected by the changes. While this co-design process may have merits, from a financial scrutiny perspective, it presents some challenges.

The costs of changes introduced via secondary legislation would not normally receive the same level of Parliamentary scrutiny as changes that are introduced via primary legislation, so there is a risk that scrutiny in relation to decisions with major cost implications may be lacking. Again, this caused some frustration among those responding to the call for views, who felt that this meant important areas of costs would not receive in-depth Parliamentary scrutiny. As noted by CIPFA:

> “CIPFA welcomes the fact that the Scottish Government commits to providing financial and regulatory impact assessments alongside secondary legislation, and that Parliament will have further opportunities to examine the associated financial implications. However, we understand that subsequent secondary legislation can significantly alter the financial implications of primary legislation, and there is the risk that secondary legislation provides fewer opportunities for robust scrutiny, even when subject to the affirmative procedure.”

Separately, CIPFA Directors of Finance said:

> “It is difficult to see how such significant changes to public services can be properly scrutinised and agreed when there are such large gaps in the analysis and so many questions yet to be answered.”

Audit Scotland also felt there was a need for further updates as details are agreed and greater certainty emerges over the delivery model:

> “…it will be critical to regularly update estimates of overall costs and other financial implications and report on these regularly to Parliament and local authorities.”

Overall costs and general considerations

The total costs of the Bill over the five year period 2022-21 to 2026-27 are estimated at between £644 million and £1,261 million. A breakdown of these estimated costs by year and according to the part of the Bill to which they relate is shown in Table 1. The FM provides a range of estimates; both lower end and upper end estimates are shown in the table.

Table 1: Estimated costs of National Care Service Bill provisions

£ million	2022-23	2023-24	2024-25	2025-26	2026-27
Total costs					
Total estimated costs - lower end	24	63	84	232	241
Total estimated costs - upper end	36	95	126	477	527
Establishment and running of NCS national organisation					
Total estimated costs - lower end	24	60	72	92	83
Total estimated costs - upper end	36	90	108	138	124
Establishment and running of care boards					
Total estimated costs - lower end	-	4	12	132	142
Total estimated costs - upper end	-	6	18	326	376
Rights to breaks from caring					
Total estimated costs - lower end	-	-	-	8	16
Total estimated costs - upper end	-	-	-	13	27
Anne's Law					
Total estimated costs	0.186	0.090	-	-	-

Source: Financial Memorandum, as corrected by Letter to Finance and Public Administration Committee, dated 30 June 2022

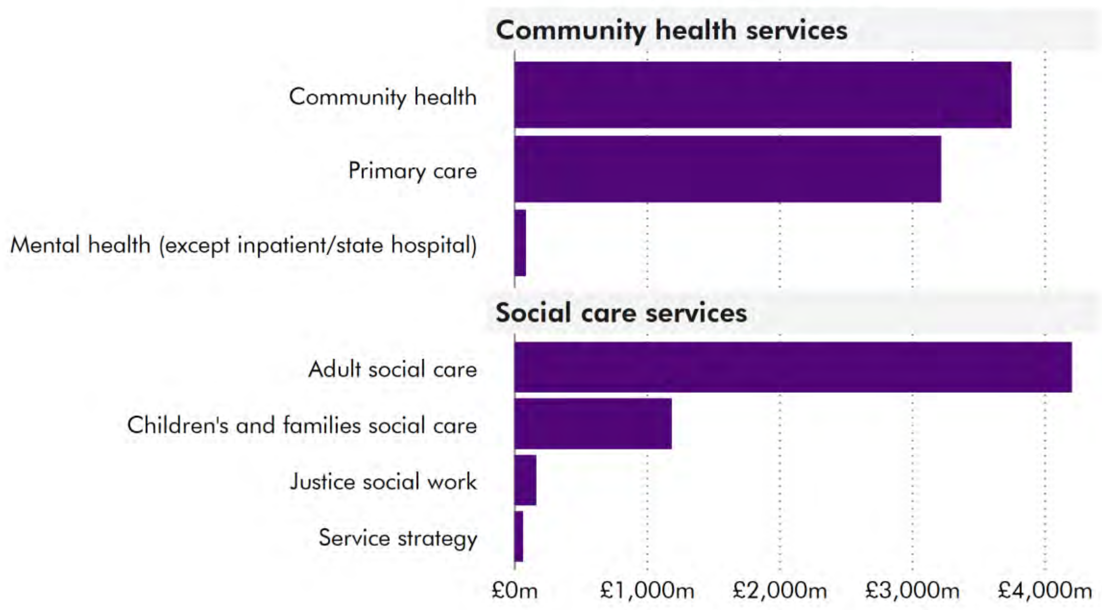
It is not clear whether these figures (and other figures in the FM) are presented in cash or real terms and – if they are in real terms – what assumptions have been made regarding inflation over the period shown. Social Work Scotland commented that “inflation is not dealt with properly in the Financial Memorandum.” Also commenting on the lack of clarity around inflation assumptions, COSLA said:

> “More fundamentally in terms of the contents of the FM itself, it is not apparent whether the figures for expected costs of the various elements of the National Care Service are in cash terms or real terms (or at what year's prices they are stated) – especially in the current context of high inflation, this has a substantial impact on the actual costs that will be incurred. Following contact with Scottish Government officials, we understand that varying uplifts, generally of 2-3%, have been applied to different elements of the costs shown in the FM, based on a degree of intuition about each of those costs. Given the nature and scale of the financial implications of what is being proposed, the lack of transparency around this process is disappointing.”

Scope of care boards

The wide range in the estimated costs reflects uncertainties over the costs of establishing and running the national NCS organisation and the associated care boards. This, in turn, reflects uncertainties around the exact format and responsibilities of these organisations. According to the FM, the lower end of the cost estimates reflects a scenario in which only adult social care services are transferred, while the upper end of the cost estimates would reflect a scenario in which adult social care and social work, children's social work and social care, and justice social work are all transferred. As shown in Figure 1, according to data presented in the FM, adult social care accounts for estimated expenditure of £4.2 billion in 2022-23, which is three-quarters of the total £5.6 billion spend on social care services. A further £7 billion of expenditure is accounted for by community health services that could potentially be transferred to care boards, although the FM notes that the scope of health functions that might be transferred to care boards has yet to be determined.

Figure 1: Estimated levels of expenditure on social care and community health services, 2022-23



Source: [Financial Memorandum]

The FM notes that these expenditure figures are illustrative and intended to give a scale of the services in scope and provide context for the policy proposals. They are not direct costs associated with the Bill. The expenditure estimates are projected forward using inflation plus a 3% uplift to reflect other pressures, such as pay, prescribing and energy prices. (Note that this is the only area of the FM where explicit consideration has been given to inflation assumptions.)

The estimates for future years project forwards based on existing expenditure profiles and do not reflect any policy decisions e.g. to increasing spend on adult social care. Furthermore, in the current volatile inflation environment, the projections for future years could look quite different if revised to reflect the latest inflation data, so may be of limited value other than for reflecting the relative scale of expenditure on different service areas.

In responding to the call for views, many respondents raised concerns over the basis for estimating the scope of services that might be transferred, including around the inflationary assumptions and the lack of acknowledgement that, under the new arrangements, there would no longer be access to local government income sources (such as council tax and non-domestic rates income) to support the financing of social care. (See separate paper summarising call for views for further detail.)

Tracking spend on social care is not straightforward under the current funding arrangements, so it will be important to get a clear baseline position on services being transferred to the NCS to support future monitoring of spend in this area. Following the Police and Fire Reform (Scotland) Act 2012, there have been significant challenges in tracking local government budgets and expenditure on a comparable basis.

Alternative delivery models

As noted in the FM and elsewhere in the Bill documents, delivery of services might take a number of formats, with decisions to be taken locally following options appraisals and consultation with stakeholders. For example, where services are currently provided in-house by local authorities, this arrangement might continue through a procurement arrangement. Alternatively, care boards may take on direct delivery of services, with staff transferring to care boards. It is also not yet determined which functions might be delivered at national level by the NCS national organisation, rather than at local level.

Decisions relating to the delivery model will have a significant bearing on costs and this is reflected in the broad range of cost estimates. The lack of any certainty around the future delivery model was a major concern for those responding to the call for views as they said that this made it impossible to assess whether the costs set out in the FM are reasonable or not. (See separate paper summarising call for views for further detail.)

Phasing of transfer of functions

The FM highlights that transfer of functions might take place immediately on creation of the care boards, or might be phased over a number of years. The FM acknowledges that "a phased approach may result in a period of double running costs or transfer costs in addition to the costs set out [in the FM]". However, no indication is given of the potential scale of such double running costs or further potential costs.

In responding to the call for views, CIPFA highlighted that potential double-running costs during the implementation phase were potentially significant, but had not been costed:

> "The Bill states that a "phased approach may result in a period of double running" in addition to the costs of providing services which could be transferred to care boards cited in the FM. However, there is no attempt made to determine or explain the likelihood, extent or time period for such potentially significant double running costs."

In relation to un-costed double running costs, Audit Scotland said:

> "These may be significant and it will not be [possible] to unpick existing services from the other services these bodies provide."

Establishment of the National Care Service - national organisation

The FM notes that, at national level, there will not be a new body. The new responsibilities for social work and social care will be handled by Scottish Government staff reporting directly to Scottish Ministers, in a similar way to the current Health Directorates of the Scottish Government that oversee the NHS in Scotland. The proposed National Social Work Agency will be set up as a unit within the NCS.

The NCS is to be established by 2025-26 and the FM notes that preparatory work is already underway, including:

- Policy development and co-design
- Programme and project management (PPM)
- Recruitment costs
- Financial forecasting
- Data and digital discovery work
- Workforce planning.

Both staff and non-staff costs are identified and these are shown both for the establishment phase and the operational phase. For the first planned year of operation of the NCS (2025-26), there are both establishment phase costs and running costs.

Estimated costs for establishment of the NCS are summarised in Table 2. These costs fall entirely to the Scottish Administration and cover both the establishment phase (2022-23 to 2025-26) and the operational phase (from 2025-26). The financial year 2025-26 incorporates elements of both establishment and running costs. A range of estimates is given, with the table below showing both the lower end and upper end estimates.

Table 2: Establishment and running costs for NCS

	2022-23	2023-24	2024-25	2025-26	2026-27
Lower end estimates					
Staff	18	47	48	64	60
Systems and IT			11	13	10
Training and other staff costs		2	2	3	3

Premises costs		1	2	7	5
Third party advice (legal/consulting)	6	10	10	6	4
Total – lower end	**24**	**60**	**72**	**92**	**83**
Upper end estimates					
Staff	27	71	72	95	91
Systems and IT		1	15	20	16
Training and other staff costs		2	2	5	5
Premises costs		1	4	9	7
Third party advice (legal/consulting)	9	14	14	8	6
Total – upper end	**36**	**90**	**108**	**138**	**124**

Source: Financial Memorandum

Staff costs

The headcount on which the establishment phase staff costs are based are set out in the FM and shown in Table 3.

Table 3: Assumed headcount for establishment phase of NCS

	2022-23	2023-24	2024-25	2025-26
Establishment phase	200-300	440-660	440-660	60-90

Source: Financial Memorandum

This would suggest that there will be between 200 and 300 additional staff engaged in preparatory work for the NCS in the current financial year, at a cost of between £18 million and £27 million. The staff costs, combined with headcount assumptions imply an average annual cost per full-time equivalent (FTE) staff of between £80,000 and £110,000 through the establishment phase. Note that these are not salary costs, but will include wider costs such as employer National Insurance Contributions (NICs) and employer pension contributions. The FM notes that many staff in this phase will be in the data and digital space, including short-term contractors. Although employer NICs and pension costs will not apply to contractors, the remuneration costs for staff in these sectors might be higher due to the specialist skills involved.

The FM notes that the staff costs are based on estimates of the resource requirements at various stages of the programme but cautions that “this headcount profile is likely to change significantly as more detail is known.”

Staff costs are shown for the operational phase of the NCS at £59-88 million in 2025-26 and £60-91 million in 2026-27. The FM indicates that this is based on the assumption that the full range of services (including children’s services and justice social work) will be transferred to the NCS from the outset. In practice, a narrower range of services might be transferred, or the transfer could be phased over a number of years. These staffing costs might therefore be expected to represent the upper end of potential costs in these years.

The FM states that the costs are based on an increase of 500-700 in the Scottish Government headcount, although the FM also states that these are not all additional posts, so it is unclear whether the costs relate specifically to additional posts (and if so, how many additional posts have been included in the cost estimates). No further details on the planned staffing profile are provided e.g. on staff grading structures. The estimated costs, combined with an increased headcount of 500-700 would imply average annual costs per staff member of between £85,000 and £180,000 depending on which end of the range is ultimately delivered. Again, these would include employer NICs and pension contributions. The Scottish Government has noted that, as with the establishment phase, there will continue to be data and digital contractors employed during the early years of the NCS, which affects the average.

For reference, according to a recent FOI response, the existing Scottish Government Directorate for Health and Social Care employs around 1,200 staff on a headcount basis. These proposals would therefore imply an increase of around 50% in the number of staff employed in the Scottish Government in the area of health and social care. Note that this refers only to staff employed centrally and does not include any staff employed locally in the proposed care boards.

It is not clear how these plans for increased staffing sit in the context of the Scottish Government's stated intent to restrain the public sector paybill and reduce the overall size of the public sector, as set out in the May 2022 Resource Spending Review.

Non-staff costs

Non-staff costs are also set out and include:

- Systems and IT
- Training and other staff costs
- Premises costs
- Third party advice (legal/consulting)

These non-staff costs are much lower than the staff costs, representing around a quarter of total costs through the establishment and operational phase. Table 4 shows the totals over the full five year period for each of these areas, with lower and upper end estimates provided. Staff costs are also shown for comparison. The FM notes that "further work is required to refine [the non-staff cost] estimates".

Table 4: NCS establishment and operational costs, 2022-23 to 2026-27

	Total estimated costs for 5-year period 2022-23 to 2026-27
Staff	237-356
Systems and IT	34-52
Training and other staff costs	10-14
Premises costs	15-21
Third party advice (legal/consulting)	36-51

Source: Financial Memorandum

In the past (and as noted by a number of respondents to the call for views), major public sector IT projects have been affected by cost over-runs and management issues, including the relatively recent Scottish Social Services Council's ICT project. Audit Scotland has reported on the Scottish Social Services Council's ICT project and wider issues in relation to public sector ICT projects and the Scottish Parliament's Public Audit Committee receive regular updates on Major ICT Projects.

Care boards

Care boards are expected to replace the current Integration Joint Boards (IJBs). They will carry out the delivery functions of the NCS and be directly accountable to Scottish Ministers and directly funded by them. This is an important difference from the current IJB arrangements, where funding is allocated to IJBs via Health Boards and Local Authorities and accountability is to the Health Boards and Local Authorities. Care boards will also employ their own staff, unlike IJBs where staff remain employed by Health Boards or Local Authorities.

Highland does not currently have an IJB as it opted to use a different model of integration. As such, the new arrangements will involve the creation of a new body in this region.

When the care boards become operational in 2025-26, costs are expected to range from £132-326 million, rising to £142-376 million in 2026-27 (see Table 5). In the set up phase, there will be some costs to the Scottish Administration relating to recruitment and acquisition of premises.

The estimates assume that there will be some savings on current expenditure. For example, the FM costings are based on the assumption that IJBs will be abolished (although there is nothing specific in the legislation in relation to this). These savings are estimated at £25-40 million per year, although no detail is provided on the basis for these estimates.

Table 5: Establishment costs and running costs of care boards

£ million	2022-23	2023-24	2024-25	2025-26	2026-27
Scottish Administration	-	4-6	12-18	-	-
Care Boards	-	-	-	132 - 326	142 - 376

Source: Financial Memorandum

Ministers will determine the number of care boards to be established. The FM states that the top end of the estimated costs reflects:

- an assumption of 32 Care Boards – one in each local authority area
- an immediate transfer of social workers and care staff to the NCS.

The lower end estimates assume a more gradual set up of care boards, possibly in a more limited number of areas. The FM is not specific about the exact assumptions around the timings and phasing, although does note that the lower end costs assume that no staff would transfer initially. This lack of detail, with significant decisions to be determined via secondary legislation was a source of much criticism in the call for views (see separate analysis of call for views).

The Bill also allows for the creation of “Special Care Boards” to provide central functions, in a similar way to the existing Special Health Boards. However, any costs associated with any such Special Care Boards do not appear to be included in the FM estimates. The FM notes that the Special Health Boards (of which there are eight) have budgets ranging from £18-425 million, so the creation of Special Care Boards could add significantly to costs.

The FM notes uncertainties around costs in relation to pensions, VAT and treatment of assets:

- In respect of pensions, an employer contribution rate of 20.9% has been assumed.
- In relation to VAT, the FM notes that IJBs are able to reclaim VAT on services (unlike Health Boards). The current costings do not assume any VAT costs, but the FM acknowledges that such costs could be considerable if the set up arrangements require VAT to be paid.
- No capital costs in relation to asset transfer or maintenance costs have been included in the FM costings. The FM notes that further investigation is required in respect of such costs.

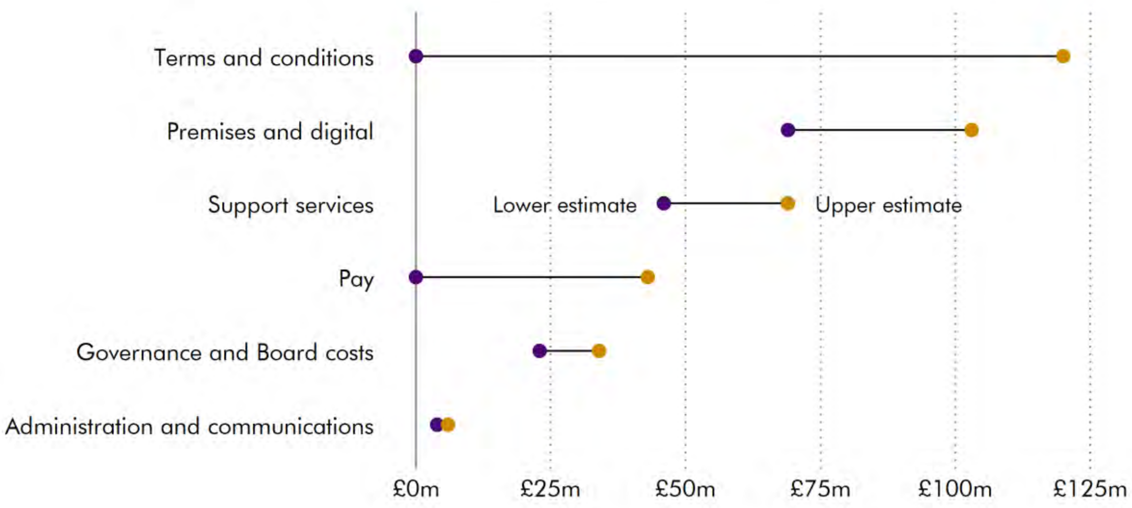
Respondents to the call for views were highly critical of the lack of detail in these areas and noted that there could be significant implications for costs, in particular in relation to the VAT status of the new care boards. On this specific point, Social Work Scotland said:

> “The VAT position for the National Care Service appears potentially serious, and may increase costs significantly. Local authorities can reclaim VAT on

> non-business and other exempt activities, but government departments and the NHS cannot.
>
> …VAT is an important financial issue and we believe that MSPs are entitled to know the worse-case additional cost scenario."

A breakdown of estimated additional care board costs in 2026-27 is shown in Figure 2.

Figure 2: Estimated additional care board costs, 2026-27



Source: [Financial Memorandum]

The FM notes that there are potentially up to 75,000 social work and social care staff that could transfer from local authorities to the new bodies. Depending on the extent to which staff transfer to the new care boards, the costs associated with 'Terms and Conditions' for care board staff could represent up to £120 million in 2026-27, equivalent to around a third of the total costs for that year. This would involve aligning factors such as sick pay and holiday entitlement. In addition, additional pay costs could add a further £43 million to costs as rates of pay would need to be aligned. At present, rates of pay and terms and conditions for social work staff vary across local authorities.

The FM notes that there could be further costs and savings for local authorities and (to a lesser extent) health boards as a result of the transfer of functions to care boards. However, these are not estimated in the FM, which notes that this information will be included alongside the relevant secondary legislation in due course. Cost information associated with secondary legislation would not routinely be scrutinised by the Parliament's Finance and Public Administration Committee.

The FM also notes the assumption that existing contracts for delivery of social care services with external partners will be transferred, so there would be no immediate cost implications for these partners. The FM does, however, note that changes to policies on (for example) ethical procurement or Fair Work could have implications for such partners in the future and that any costs associated with such policy changes will be subject to separate financial and regulatory impact assessment. Again, these financial and regulatory impact assessments would not receive the same level of scrutiny as an FM.

Health and social care information

The FM does not include any estimated costs associated with Part 2 of the Bill, which deals with information sharing and information standards. According to the FM, “this will enable the creation of the nationally-consistent, integrated and accessible electronic social care and health record”. The FM acknowledges that there will be costs involved in achieving this, but states that “at this early stage it is not possible to provide an exact position on the total cost of investment or how the costs will be phased”.

Although these costs will be included in business cases in due course, these would not be subject to Parliamentary scrutiny and it would normally be expected that the FM should include at least some indication of likely costs, even where these are uncertain.

In their submission to the Committee, CIPFA raised concerns in relation to this gap in the cost information:

> “No cost estimates are provided for the proposed electronic health and social care record, which could represent a very significant outlay. The National Audit Office has reported that the track record for digital transformation in the NHS has been poor, with previous major national programmes being “expensive and largely unsuccessful”. This precedent suggests that the Scottish Government need to meticulously evaluate and analyse the costs of the proposed digital project, which will be a very complex – and potentially costly – undertaking. For such a major component of the Bill, it is surprising and disappointing that no estimates are provided.”

A number of other organisations raised concerns over the lack of costings in this area.

Rights to breaks from caring

The Bill includes proposals to establish a statutory right for unpaid carers to take short breaks. This will be via a personalised adult carer support plan (ACSP) or young carer statement (YCS). This will be in addition to existing funding available through a range of small grant schemes that provide easy access support for those in less intensive caring roles. Costs have been estimated based on:

- Numbers of carers and the intensity of caring (hours per week)
- Nature of replacement care (residential or home-based)
- Unit costs for replacement care, carer breaks and easy access support
- Cost and numbers of young carer support workers.

Assumptions have had to be made around:

- Numbers of carers that will exercise their right to breaks
- Average amount of replacement care for personalised support packages
- Balance between personalised support and easy access support
- Existing levels of local authority/IJB spending on breaks and replacement care
- How demand and provision will evolve over time.

The assumptions are set out clearly in the FM, but the range of different assumptions on which the calculations are based means that the estimates will be sensitive to alternative assumptions. Reflecting this uncertainty, upper and lower end estimates are given.

Also, as the demand and scale of provision is expected to build over time, estimated costs are given for a longer time period than for other aspects of the Bill. In the early years of implementation, costs are expected to be £8-13 million in 2025-26 and £16-27 million in 2026-27. However, by 2034-35, costs are expected to have increased ten-fold to between £82 million and £133 million. There are no estimated costs associated with this aspect of the Bill prior to 2025-26.

Table 6: Estimated additional costs associated with breaks for carers

	2025-26	2026-27	2027-28	2028-29	2029-30	2030-31	2031-32	2032-33	2033-34	2034-35
Lower end estimate	8	16	25	33	41	49	58	66	74	82
Upper end estimate	13	27	40	53	66	80	93	106	120	133

Source: Financial Memorandum

The FM also sets out the costs of easy access breaks, although these are not a direct consequence of this Bill.

The FM notes that information on breaks collected from the Carers Census that could be used to inform cost estimates is largely incomplete, but that measures are underway to improve the quality of information gathered.

The cost estimates presented in the FM do not incorporate any estimate of the potential savings that could result from enabling carers to take regular breaks from caring responsibilities. The FM does note, however, that these savings could be substantial as the Bill provisions around carers' breaks are aimed at protecting the health and wellbeing of carers. For example, enabling breaks for carers could deliver savings on both social care and health expenditure through:

- helping to ensure that existing caring relationships do not break down
- reducing carer ill health
- enabling carers to remain economically active.

Visits to/by care home residents ("Anne's Law")

"Anne's Law", which would be brought into effect by Section 39 of the Bill proposes statutory rights for those living in adult care homes to visit or be visited by relatives or others. The FM notes that changes to guidance were introduced in the light of the pandemic and new Health and Social Care Standards are now in place. As such, it is not possible to disentangle the costs of the new Standards from any related to the Bill. The FM does note that there may be costs for care homes and others in promoting the new arrangements, but that these are expected to be absorbed within updates to existing training and other materials.

Some modest costs are identified for the Care Inspectorate as a result of a larger number of individuals (care home residents, friends and family) exercising their right to complain in the light of the new arrangements. Any such increase is expected to be short-lived in nature while the changes are implemented, and so costs are not expected to persist beyond 2023-24.

As well as any increase in costs associated with additional complaints, there will also be modest costs for the Care Inspectorate in promoting the new guidance and Standards and in building capacity and capability within the sector. In 2022-23, additional costs are estimated at £186,000, falling to £90,000 in 2023-24.

The FM also highlights the health and wellbeing benefits of allowing such visits and notes that these benefits can also result in cost savings for the delivery of services. These costs are not quantified in the FM.

Changes to powers and functions of the Care Inspectorate

The Bill proposes some minor changes to the powers and functions of the Care Inspectorate, namely:

- enabling the Care Inspectorate to cancel a service's registration without first issuing an improvement notice under certain circumstances
- allowing for Health Improvement Scotland (HIS) to support the Care Inspectorate in carrying out inspections (with HIS potentially charging for services).

The Scottish Government has taken the view that neither of these changes are expected to result in significant costs, so are not included within the FM estimates.

Summary

The FM reflects the Scottish Government's best current estimate of the costs associated with the Bill. However, a range of uncertainties are acknowledged, the most significant of which include:

- the range of services to be transferred to the NCS
- the nature of the delivery model to be introduced

- the phasing of introduction of the new model
- staffing requirements and the extent to which staff will transfer to new bodies
- the VAT status of new bodies
- the transfer of assets to new bodies and the maintenance costs associated with these assets

However, where decisions are taken that are implemented through secondary legislation, these would not normally receive further in-depth scrutiny by the Finance and Public Administration Committee as there would not be an associated FM. Similarly, any business cases or financial and regulatory impact assessments would not be subject to Parliamentary scrutiny in the same way as an FM.

This leaves scope for estimated costs to change considerably without any detailed Parliamentary scrutiny, so it might be considered appropriate for updated costs to be presented to the Parliament’s Finance and Public Administration Committee as the Bill progresses through its Parliamentary stages and as further decisions are reached on the scope and nature of the NCS. A number of organisations, including CIPFA and Audit Scotland, have recognised this risk and have recommended that updated estimates be provided to Parliament as further decisions are taken and uncertainties resolved.

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October 2022

SPICe The Information Centre
An t-Ionad Fiosrachaidh

Finance and Public Administration Committee

26th meeting 2022 (Session 6), Tuesday 25 October 2022

National Care Service (Scotland) Bill: Financial Memorandum - Summary of Call for Views

Background

In order to inform its scrutiny of the Financial Memorandum (FM) accompanying the National Care Service (Scotland) Bill, the Finance and Public Administration Committee included a number of specific questions in the general call for views on the Bill. The questions included in the call for views were the standard questions asked by the Committee when seeking views in relation to FMs and are included in this paper at Annex A.

The call for views was issued on 8 July 2022 and closed on 2 September 2022. A total of 218 responses were received to the general call for views on the Bill and these are published on the Parliament website. Of these responses, 92 answered at least one of the questions relating to the FM. These 92 respondents included:

- 18 local authorities
- 18 Integration Joint Boards/Health and Social Care Partnerships
- 8 NHS Boards
- 27 third sector organisations and other stakeholder groups
- 10 bodies representing employers or staff in health and social care
- 2 academic bodies / think tanks
- 2 public bodies
- 6 private individuals

In addition, three responses were submitted separately to the Committee (from CIPFA, Social Work Scotland and COSLA). The Fraser of Allander Institute has also published separate analysis in relation to the Bill, which includes consideration of financial aspects (at Annex C).

This paper summarises the responses received in relation to each of the questions. However, before analysing responses to the individual questions, a number of general issues are considered as these were raised by many respondents, but not always in response to the same question. These common themes are set out below under the following headings:

- Scope of the FM
- Role of secondary legislation
- Affordability and budget implications
- Lack of detail in FM
- Scale of proposed re-organisation
- Scope and scale of services to be transferred
- Implications of shift to central funding of social care
- VAT and legal status of new bodies
- Proposed transfer of local government staff and assets and liabilities
- Wider impact on businesses and third sector organisations

Scope of the FM

Many respondents voiced concerns that the FM does not set out the costs associated with delivery of services over the period covered. The FM deals only with the administrative costs of setting up the new delivery arrangements, but makes no comment on the actual costs of delivering services over the period covered.

However, as explained in the SPICe briefing on the National Care Service (Scotland) Bill, the purpose of the FM is to consider the costs of the changes introduced by the proposed legislation. The legislation provides for changes to the structures in place for delivery of social care and this is what the FM is required to cost. As highlighted in the FM, the costs of delivering those services (and proposed further changes to social care investment) are not covered by the legislation itself, so are not required to be costed within the FM. The FM states:

> "Creation of the NCS will support many of [the planned social care] reforms; for example, it is intended that it will support greater consistency in the provision of services focusing on early intervention and prevention, and in ethical commissioning which will promote Fair Work standards for staff.

> However, these are policy decisions to be made or sustained under the new framework, not necessary consequences of the Bill provisions."

There was clearly some frustration from respondents around this approach, but it should be emphasised that it is not the role of the FM to look beyond the direct implications of the legislation under consideration.

The Fraser of Allander Institute noted that:

> "The financial information that has been worked on by officials and included in the Financial Memorandum only covers what is in the legislation. Whilst there are some gaps (e.g. the integrated health and social care record) and minor queries we have noted in our analysis, on the whole and given the exceptional levels of inflationary uncertainty at the moment, analysis provided by the Scottish Government is reasoned and logical."

CIPFA felt that the narrow scope of the FM might result in potential future costs being overlooked:

> "While it is correct that the FM considers only those powers conferred directly by the Bill and not those related to wider plans for policy reforms, the fact that many of the associated estimates are related to the current cost of services raises concern. Clearly, wider policy reforms could have serious and significant implications for the overall expenditure on services. For example, increasing pay, improving terms and conditions for social care staff, bringing free personal and nursing care in line with National Care Home Contract rates, and removing non-residential social care charges would have a significant impact on levels of spend of services, and therefore on the costs estimates for the NCS and care boards going forward."

Social Work Scotland also argued that ignoring the costs of the wider reforms recommended by the Independent Review of Adult Social Care (the "Feeley Report") meant that only a partial view could be obtained:

> "[The FM] does not cover the full costs of establishing and running a National Care Service in Scotland that meets the aspirations of the Feeley Report and the Scottish Government's own Autumn 2021 NCS consultation. Instead of seeing the social care reform programme as part and parcel of the National Care Service, these have been separated. That means that MSPs, civil society and the public, cannot see the total costs in order to be able to discuss any priorities or alternatives, or any required additional funding mechanisms (as Derek Feeley believed would be necessary and asked to be reviewed in his final recommendation). MSPs are entitled to be clearer about the overall affordability of the National Care Service including all the necessary service improvements during the Stage 1 scrutiny and debate."

The Scottish Commission for People with Learning Disabilities (SCLD) also acknowledged the rationale for the limited scope of the FM, but commented:

> "While this may be a legitimate approach, it is very unhelpful for many of us. It invites scepticism about the commitment and even the ability to invest appropriately in this flagship legislation."

Reflecting the role and purpose of the FM, this summary paper does not focus on comments made around the funding of social care more generally, as this is not the purpose of the FM. As the FM is intended to consider the costs of the legislation, this paper focuses on comments relating to those direct costs and not the wider issues around funding of social care.

Similarly, while some respondents offered views on the policy proposals in response to the questions on the FM, these are not considered in this paper. This paper focuses on the adequacy of the financial estimates set out in the FM, which will be the focus of the Finance and Public Administration Committee's scrutiny. Other Parliamentary committees will consider the nature of the proposals (the Health, Social Care and Sport Committee, the Local Government, Housing and Planning Committee, the Social Justice and Social Security Committee and the Education, Children and Young People Committee. The role of the Finance and Public Administration Committee is to consider the financial estimates in the light of the draft legislation, so this paper focuses on this area, rather than considering the views expressed on the broader principles and policy, which will be considered in depth by other committees.

Role of secondary legislation

There was also some frustration from respondents that the Bill is "enabling" and provides a broad framework for the proposed changes, while leaving some of the detailed decisions to be taken at a later date and introduced via secondary legislation. As highlighted in the SPICe briefing on the National Care Service (Scotland) Bill, this means that these decisions (which could have significant financial implications) will not receive the same level of Parliamentary scrutiny as they would have done if they had been included in the primary legislation.

In its submission, CIPFA commented:

> "We note that the Bill as it stands is enabling, and "leaves space for more decisions to be made at later stages," and that some of those decisions will be implemented through subsequent secondary legislation. However, some of these later decisions may have significant financial implications and yet no financial estimates are provided to enable full scrutiny of the provisions of the Bill as drafted.
>
> CIPFA welcomes the fact that the Scottish Government commits to providing financial and regulatory impact assessments alongside secondary legislation, and that Parliament will have further opportunities to examine the associated financial implications. However, we understand that subsequent secondary legislation can significantly alter the financial implications of primary legislation, and there is the risk that secondary legislation provides fewer opportunities for robust scrutiny, even when subject to the affirmative

> procedure. It is crucial that stakeholders can voice their opinions and that the creation of the NCS harnesses sector knowledge at every stage."

Social Work Scotland also highlighted significant decisions to be left to secondary legislation, including the number and scope of local care boards:

> "The FM is largely confined to the establishment and running costs of the NCS Institutions – *nationally*, an expansion of the Scottish civil service at a net additional cost of between £83m and £124 million; together with an undetermined number of local Care Boards to replace Integration Joint Boards and take over social work and care functions of Local Authorities as specified later in Ministerial directions or secondary legislation, at a net additional cost of between £142m and £376 million."

Reflecting concerns around the decisions yet to be taken, CIPFA suggested that the Committee might want to consider:

- "requesting that the Scottish Government provide an update to Parliament on the estimates in the FM following their forthcoming emergency budget, particularly in light of the changes in the wider financial and economic climate since the FM was prepared

- the proposed procedures attached to subsequent secondary legislation arising from the Bill and whether it will enable adequate consideration of the associated financial implications

- planning to undertake robust post-legislative monitoring and evaluation of the financial implications of the provisions in the Bill, particularly given that so much depends on decisions yet to be taken."

Affordability and budget implications

Many respondents voiced concerns around the financial implications of the proposed reforms at a time when budgets are already stretched.

CIPFA noted:

> "The Scottish Government are committing a significant sum from their own budget at a time when the deputy first minister has announced cutting over £500m from planned spending, and at the time of writing, is planning a further emergency budget in the coming weeks. This raises serious questions about the affordability of this major transformation project at a time when the Scottish Government as a whole is facing serious financial uncertainty as a result of the wider financial and economic climate."

And further noted:

> "In the 2022-23 Budget, the Scottish Government committed to increasing social care spend by 25% by the end of the parliament, which equates to c. £840m. According to the amended Table 1 of the FM, establishing and running the NCS national organisation alone is estimated to cost between

> £331-£496m. Including the establishment and running of care boards, this equates to between £620m and £1.2bn over five years. This means that the Scottish Government is potentially spending £400m more than has already been committed, and on what could arguably be considered a transformation programme rather than directly on frontline services. A much greater level of detail is essential to conclude whether this is a worthwhile investment."

COSLA raised similar concerns, noting that:

> "The establishment of the National Care Service body alone will cost up to £250 million, with subsequent overall NCS running costs of up to £500 million per year spent solely on structural reform rather than directly on improvements."

Further adding:

> "We have significant reservations about the rationale for directing such substantial sums at this disruptive and time-consuming medium-term structural reform."

The Scottish Ambulance Service (SAS) expressed similar views, and noted specific areas of concern:

> "At a time when the financial challenges are at their most significant, SAS do not consider it is good financial probity to consider investing in unnecessary costs that would include:
>
> - The training and responsibilities of those deemed Responsible Officers in the NHS to assure the competency of medical and clinical staff for revalidation by the professional regulators and appraisals.
> - additional resources for the new governance arrangements
> - additional resources for a new leadership structure
> - additional resources for a new clinical leadership structure and the creation of competition for senior clinical leaders
>
> all creating an opportunity cost of this reform at the time of current financial challenge, that is likely to be experienced for at least the next 3-5 years."

The NHS Scotland, City of Edinburgh Council and CIPFA Directors of Finance made similar comments around whether spending significant sums on structural reforms is a sensible use of resources when budgets are already under considerable pressure. Many respondents expressed the view that these sums would be better spent on improving services within the current delivery arrangements.

Lack of detail in FM

A major concern expressed by a significant number of respondents was the lack of detail in the FM, which respondents claimed makes it difficult to assess the reasonableness and/or accuracy of the FM.

CIPFA Directors of Finance said:

> "MSPs are essentially being asked to scrutinise a Bill with a Financial Memorandum which is incomplete and where the financial aspects of the "business case" are still "under development". In our view the question of what it will really cost to set up the National Care Service in a way that is able to deliver on all its ambitions, as well as how it will be sustainably funded is unanswered at this point. It is difficult to see how such significant changes to public services can be properly scrutinised and agreed when there are such large gaps in the analysis and so many questions yet to be answered. The approach to the Bill and Financial Memorandum supporting it does not accord with the best practice on the preparation of business cases and options appraisals which Councils are rightly held to."

In its submission, CIPFA said:

> "There is lack of detail in describing the methodologies used to calculate many of the cost estimates provided (aside from the helpful detail on carers' breaks), which makes forming an opinion on the reasonableness and accuracy of the FM extremely difficult. We assume that in time there will be a detailed business case with accompanying extended financial information. However, without such information, conducting a comprehensive analysis of the estimates provided is problematic."

COSLA said:

> "We would like to see much more clarity and transparency around how the costs of the National Care Service will be managed and met, with detailed and costed options being developed and appraised at every stage as the design and implementation of the National Care Service progresses. This is essential to enabling effective Parliamentary scrutiny of the financial and policy detail of the Bill."

Further adding:

> "Some of the areas described above are acknowledged in the FM as requiring further work, but this work should have been done before the Bill was published. A Business Case should also have been produced, setting out the rationale, costs, benefits and risks of the National Care Service. This would have enabled Parliament and the public to adequately scrutinise the proposals and assess whether they represent Best Value."

City of Edinburgh Council acknowledged that the lack of detail in the FM reflected the lack of detail in the Bill itself:

> "The lack of detail in the Bill is reflected in the Financial Memorandum which has only been able to make very broad estimates for some of the costs and savings and includes a wide range of possible financial outcomes. As with the other aspects of the Bill, we have significant concerns with this approach."

West Dunbartonshire Health and Social Care Partnership said:

> "The provision of the Financial Memorandum is welcome, but note there remains a lack of clarity in respect of the costs associated with the Bill. The Board do have further concerns in respect of the level of due diligence undertaken, especially as not all services which could transfer to the National Care Service appear to be included in the Memorandum. Due to the level of uncertainty reflected in the Bill the value of the financial memorandum is diluted. We recognise that this lack of clarity is referenced throughout the financial memorandum and question whether sufficient scrutiny can be applied to the financial implications of the Bill given this uncertainty."

Dumfries and Galloway's comments reflected the views of many other respondents:

> "Overall, it is deeply concerning how much is still unclear and how many questions remain unanswered by the Financial Memorandum and by the Bill."

West Dunbartonshire Council made similar comments:

> "Overall, the memorandum raises more questions than it answers and there is a need for greater clarity on exactly how this will be set up; what will transfer; what happens with staff, assets and funding (social care and back office support) and what will be left in the Councils."

Renfrewshire Health & Social Care Partnership said:

> "The Financial Memorandum is under-developed at this point and – whilst caveated that it is a 'best estimate' of costs – it does not adequately achieve its stated objective to 'set out the costs associated with the measures introduced by the Bill'. "

Many others noted similar concerns around the lack of detail in the FM, including Angus Council, City of Edinburgh Council, East Lothian Integration Joint Board, East Lothian Council, Angus Public Protection Chief Officers Group, Glasgow City Health and Social Care Partnership, Renfrewshire Council, Argyll and Bute Council, Glasgow City Council, North Ayrshire Council and North Ayrshire Integration Joint Board, Aberdeenshire Health & Social Care Partnership and East Lothian IJB.

Reflecting the lack of detail currently available, Audit Scotland recommended that cost estimates be reviewed as proposals develop and more detail becomes available:

> "Given the significant amount of uncertainty set out in the financial memorandum – from both the co-creation approach planned and other uncertainties as implementation is worked through – it will be critical to

regularly update estimates of overall costs and other financial implications and report on these regularly to Parliament and local authorities."

Scale of proposed re-organisation

Several respondents did not feel that the costings reflected the scale of re-organisation proposed.

Social Work Scotland said:

> "[The FM] is simply not up to the task of supporting a major piece of legislation. The Scottish Parliament, civil society, people who use social work and social care services, unpaid carers, family members, people who working the care system in Scotland, and the general public need to be able to see more robust statements of the costs of the National Care Service, including the essential investments in social care services that are urgently needed. What is included in the Financial Memorandum is alarming: up to £500 million of additional organisations costs by 2026-27, without the whole picture necessary for the affordability of the National Care Service to be established, and any necessary priorities or alternatives to be discussed."

East Ayrshire Council and East Ayrshire Integration Joint Board made a joint submission, which included the following comments around the scale of the proposals:

> "The financial implications of the proposals are likely to be significant and are not addressed within the document. With the establishment of the Integration Joint Board it has become necessary to develop and augment the support services provided through integration partners including additional management and delivery functions. It is anticipated that dismantling and separating Integration Joint Boards and Health and Social Care Partnerships and the subsequent creation of a National Care Service and Care Boards would result in additional costs both in administration and support services.
>
> The creation of a separate national body comprised of local social services, previously located within councils, will cause dramatic and substantial structural change within local government and have the potential to cause financial shocks as budgets and contributions are disaggregated."

COSLA said:

> "…in what may be the biggest organisational transformation in the public sector in recent memory, the corporate backing required to support extra structures and systems and/or to redeploy workers should not be underestimated in terms of both people and money."

The response submitted on behalf of the CIPFA Integration Joint Board (IJB) Chief Finance Officers (CFOs) said:

> "Structural changes are likely to require significant resource and stretch existing capacity. It is essential change is done at a pace which will not risk

> the continued improvements of the support we provide. Adequate additional resource must be provided to ensure any change is fully funded."

Angus Council also expressed concerns around the scale of change proposed:

> "Change on this scale and of this complexity probably hasn't been attempted before in Scotland and that points to a higher than average likelihood of higher costs to deliver along with longer timeframes than has currently been assumed."

Scope and scale of services to be transferred

Many respondents highlighted a lack of clarity around the scope and scale of services to be transferred to the NCS and the difficulty this lack of clarity presented in seeking to assess the reasonableness or accuracy of the costs.

In their submission to the call for views, COSLA commented that:

> "There is a real lack of clarity regarding the impact of the National Care Service proposals on local authority budgets – especially given the different treatment of the NHS and Local Government in relation to the transfer of functions and in particular staff. As a result, it is extremely challenging to evaluate or make decisions on the basis of the FM."

Table 2 of the FM presents information on current levels of expenditure on social care, based on 2019-20 date, projected forwards using an assumption of 'inflation plus 3%', but taking no account of Scottish Government plans to increase investment in social care, or other commitments such as those relating to social care pay. While these baseline costs are not the direct costs of the FM, they do serve to reflect the scale of services that are intended to be covered by the legislative proposals. Therefore, if they are not accurate, the costs of the legislation could be higher or lower than currently estimated.

COSLA and many others noted that inflation is now much higher than when the FM was drawn up, with implications for the future scale of funding that will be covered by the Bill proposals.

COSLA also noted that these forward projections are:

> "…completely at odds with the reality presented by the Scottish Government's own Resource Spending Review, of a 'flat cash' settlement (a 7% real-terms cut) for Local Government and 2.6% real terms increase in Health and Social Care budgets over the next four years."

SOLACE and others raised similar concerns around the basis for the estimation of the baseline cost of services to be transferred. Renfrewshire Health & Social Care Partnership said:

> "The FM is not aligned with the Resource Spending Review, for example figures have been projected using inflation when that is not reflective of the flat cash settlement. A lack of alignment with the Review also fails to

> acknowledge the anticipated consequential impact on local government partner settlements, thereby leaving IJBs [Integration Joint Boards] in a precarious financial situation prior to any changes to implement the NCS. Figures used are also based on current service provision and not the desired service provision of the NCS. Changes required to meet unmet need, change/remove eligibility criteria and the removal of non-residential charging will all have an impact on the size and scale of service delivery and therefore the cost of service delivery and workforce required."

Social Work Scotland expressed similar concerns around the projections of social work expenditure and the inflationary assumptions:

> "…local authorities have not received full inflation or received demography funding in the local government finance settlements; and the May 2022 *Resource Spending Review* flat-lines local government funding going forward in *cash* terms, meaning an annual reduction over £1 billion in real terms by 2026-27 compared to 2021-22. So, the figures in Table 2 are an illusion, and also do not appear to do any real work within the NCS estimates. In any event, future transfers from councils need to be based on local authority *grant funding* from the Scottish Government not on local authority *spending*, as that is also funded from council tax and non-domestic rates."

NHS Borders noted that current expenditure would not necessarily reflect the costs of delivery within a new system, due to the nature of costs, some of which are fixed or not directly transferrable:

> "For NHS services, it is noted in the Financial Memorandum that the scope of health functions to transfer to the Care boards remains to be determined. Financial estimates for health services in scope have been calculated using Scottish Health Service Costs book which includes allocation of indirect and overhead costs, including corporate and board functions which will not be directly transferrable to any new service.
>
> In addition, the direct service costs attributable to delivery of existing service models are assumed to be fully transferrable and there is no recognition within the cost estimates of the nature of fixed, semi-fixed or variable costs."

South Ayrshire Council and Integration Joint Board also noted similar concerns around estimating the costs of services to be transferred and the need to take account of shared services and physical assets:

> "It has been previously calculated that 48% of NHS Ayrshire and Arran's budget is delegated to the three Ayrshire IJBs. These allocations do not currently take into account the full costs, as property costs are not included in the health and social care budget. More importantly, the cost from the host of subsidiary support services, for example, Legal, Procurement and Finance & ICT and other services which are utilised by the IJB, to support and advance the aims and objectives of the partnership, are also not included and would

> require to be passed to the new body when the disaggregation of budgets takes place.”

Glasgow City Health and Social Care Partnership also noted concerns with the basis for assessing the scale of services to be transferred:

> “Table 2 identifies the potential costs of services which could transfer to NCS based on 2019-20 [Local Financial Returns] and the Scottish Health Service Cost Book. Although used to illustrate the potential scale, it is not an appropriate base for a number of reasons and is not reflective of the actual funding available to support services on a recurring basis”

Argyll and Bute Council and CIPFA Directors of Finance raised similar concerns around the basis for the figures presented in Table 2 of the FM.

COSLA did acknowledge that the costs set out in the FM are described as “illustrative”, but noted concerns that these figures could form the basis for calculating “the portion of Local Government funding that may be removed as a consequence”.

Similarly, Audit Scotland said:

> “We note that the Scottish Government’s aim in setting out these estimates is to provide illustrative figures ‘to show a scale of the services in scope’. Nonetheless, in our view it is important to understand the limitations of the figures provided to support wider consideration of the financial implications of the Bill.”

Implications of shift to central funding of social care

Social care is currently delivered by local government, with local authorities able to access funding through the grant from the Scottish Government, but also through income raised from a range of sources.

CIPFA highlighted that, by transferring delivery of social care services to central government and away from local government, the Scottish Government would no longer be able to rely on local government income to support the costs of social care service delivery and this needed to be reflected in any costings:

> “The cost of services that could be transferred may not be considered as additional, but rather as a transfer from local government to the Scottish Government. However, the use of local government total expenditure as a basis means that this includes spending funded from locally raised income (eg council tax or non-domestic rates), which will represent an additional pressure to be planned for and identified from the Scottish Government’s core budget. There appears to have been no attempt to quantify or assess the extent of this pressure.”

SOLACE expressed similar views, stating that their response to the original consultation on the Bill highlighted that:

> "…there was no detail in relation to the relationship with the local government grant settlement, noting that social care is not fully funded through the settlement indicators and that local authorities, reflecting local prioritisation decisions, have taken spend decisions to subsidise this area of services. We also noted that there was no reference to modelling the scale of this subsidy or clarity on how the subsidy is incorporated into the financial modelling."

COSLA noted that:

> "It is essential that the Scottish Government undertakes further work jointly with COSLA and other stakeholders on the quantum of funding that would be transferred from Local Government to the National Care Service. The financial transfers cannot be based on the total actual expenditure of local authorities on social care, as this is funded from several income sources and not just Scottish Government grants. It would also disadvantage councils which have sought to protect social work and care budgets, compared to others."

CIPFA Directors of Finance commented:

> "The financial transfers cannot be based on the total actual expenditure of local authorities on social care, as this is funded from several income sources and not just Scottish Government grants. It would also disadvantage councils which have sought to protect social work and care budgets."

Aberdeen City Council also raised concerns around the current gap between central government funding and actual levels of expenditure by local authorities and how this would be addressed within a new system where local authorities are not responsible for delivery:

> "The funding mechanism does not necessary match the spending profile of Councils at present, with expenditure in the areas of care being greater than the value of funding inputs. If this is the case, then Local Government should not accept that the value of grant funding removed should be the full cost of current services as this may be detrimental to supporting and sustaining remaining services"

COSLA also highlighted a potential loss of efficiencies through the transfer away from local government delivery, that could act to offset any anticipated savings from the new delivery model:

> "…the FM anticipates savings or efficiencies through shared services across the National Care Service if significant numbers of staff and services are transferred. However, it fails to acknowledge the corresponding loss of economies of scale in Local Government arising from the loss of such a sizeable portion of its workforce, and the broader impact that that is likely to have. Local Government has been driving efficiencies for over a decade, particularly in central services, and there is a risk that a necessary critical mass will be lost for some services, such as audit and other professional services which are often provided by the same individuals or teams for the council and the integration authority."

SOLACE, CIPFA Directors of Finance, Angus Council and East Lothian Council voiced similar concerns around the potential loss of economies of scale for local government.

City of Edinburgh Council also noted that efficiencies might be difficult to achieve:

> "Audit Scotland report on police integration reflected the challenges of a proposal for change built on the assumption of efficiencies. Nationalising a service does not necessarily result in efficiency especially when a service has experienced a historic budget gap. The Scottish Government should provide detail on any assumptions it is making about cost savings and efficiency in its options appraisal."

Glasgow City Health and Social Care Partnership noted:

> "There is a real possibility that supporting this new structure may actually result in additional costs rather than efficiencies given there will now be four organisations to be supported; Local Government, Health Board, National Care Service and Care Boards."

VAT and legal status of new bodies

A number of respondents raised concerns over the lack of clarity around the legal status of the proposed care boards, including their VAT status. Local authorities are able to reclaim much of the VAT they incur, but if new bodies are not able to do this, there would be significant cost implications.

Social Work Scotland said:

> "The VAT position for the National Care Service appears potentially serious, and may increase costs significantly. Local authorities can reclaim VAT on non-business and other exempt activities, but government departments and the NHS cannot.
>
> …VAT is an important financial issue and we believe that MSPs are entitled to know the worse-case additional cost scenario."

CIPFA expressed similar views, saying:

> "The FM lacks detail on the planned nature of care boards in terms of their legal status and financial arrangements. It states that professional expert support will be required to identify costs in areas such as VAT, assets and pensions. All three of these areas will potentially incur significant costs, and no indication of the assumed cost is given for VAT or assets (pensions assumes a contribution rate of 20.9%).
>
> VAT is a particular concern. Currently local government bodies can reclaim most of the VAT they incur in conducting statutory functions under Section 33 of the Value Added Tax Act 1994. By contrast, NHS bodies fall under Section 41 of the 1994 Act and in general cannot reclaim VAT they incur (with some

> exceptions for contracted-out services). Should care boards be established in the model of health boards, then the resulting change to the VAT regime could result in significant VAT costs being added to those transferred costs of services estimated in the FM. There are also significant complications that may arise in the transfer of staff if there is any differential VAT regime between care boards and local authorities. The precedent of the centralisation of police and fire services shows that it is imperative that a favourable VAT settlement is reached before the NCS enters operation. It would be helpful to have an estimate range of how much VAT would be incurred if a favourable VAT position was not available to the NCS and the care boards."

Comhairle nan Eilean Siar said:

> "We also supported concerns raised by other consultees that there was no reference to VAT status or indication of discussions with HMRC and that there was no detail on proposed financial arrangements for the National Care Service relating to borrowing, ability to hold reserves, audit or financial regulations. These were significant issues at the time of the establishment of Police Scotland, for example, and clarity on these matters is required at an early stage."

And, in its submission to the call for views, COSLA said:

> "A number of significant questions and risk remain, such as in relation to VAT as well as pensions and assets, each of which has major financial implications for the National Care Service itself and for local authorities; these are all acknowledged in the FM as requiring further work, but this work should have been done before the Bill and the FM were published to enable Parliament and the public to adequately scrutinise the implications of the Bill. There should also have been a Business Case produced before the draft Bill setting out the rationale, costs, benefits and risks of the National Care Service to facilitate meaningful scrutiny by Parliament, the public and affected organisations as to whether the proposals represent Best Value."

In their separate submission to the call for views, COSLA said:

> "The proposed structure and governance of the National Care Service is such that it is likely to be liable for VAT, at least unless and until arrangements can be made to exempt it. Clearly – as the FM itself acknowledges – this would significantly increase its costs of operating and consequently reduce the funds available to spend directly on social care support. Under HM Treasury rules, local authorities and certain other bodies are able to recover the VAT incurred on certain purchases – in order that VAT costs are not funded through local taxation – whereas other public sector organisations including the NHS cannot reclaim VAT incurred on many goods and services, which is therefore a cost that must be covered by departmental budgets."

The response submitted on behalf of the CIPFA Integration Joint Board (IJB) Chief Finance Officers (CFOs) raised concerns over:

> "…treatment of existing and future assets, control over revenue and capital, borrowing and debt repayments on assets and the fundamental question of the type of legal body Boards are likely to be. These issues will have a significant impact and the financial memorandum gave an opportunity to provide additional information which was sadly missed. While there is acknowledgement in the FM of additional work being required it is the view of the CFO network this work should have been significantly progressed as due diligence prior to publication of the FM to ensure the public and Parliament can provide informed opinions.
>
> Had the FM been informed by a Business Case on implementing the NCS this would likely have given a more informed and robust financial assessment of estimated cost implications. Additionally, this would have then complied with the relevant Audit Scotland guidance."

Many other respondents also highlighted concerns around the lack of clarity over the legal status of the proposed new organisations, and the financial implications. These included SOLACE, Dundee Health and Social Care Partnership, Aberdeen City Council, East Lothian Council, West Lothian Council, Renfrewshire Health & Social Care Partnership, Angus Public Protection Chief Officers Group, CIPFA IJB CFOs, South Ayrshire Council and Integration Joint Board, Glasgow City Health and Social Care Partnership, Angus Council, Argyll and Bute Council, CIPFA Directors of Finance, Aberdeenshire Health & Social Care Partnership, North Ayrshire Council and North Ayrshire Integration Joint Board, East Lothian IJB, Highland Council, Scottish Borders Council, Audit Scotland and Scottish Borders Health & Social Care Integration Joint Board.

Proposed transfer of Local Government staff and assets and liabilities

A number of respondents voiced concerns around the potential costs associated with a large-scale transfer of staff from local government to the new National Care Service, and the associated Transfer of Undertakings (Protection of Employment) (TUPE) implications and implications for pensions. There were also a number of responses that raised the issue of transfer of local government assets and liabilities, and the lack of clarity around the extent or nature of such transfers.

West Dunbartonshire Council said:

> "Other areas of financial risk which are not explicitly clear in the Financial Memorandum relate to pensions, TUPE (both areas of significant concern for our staff currently employed by the local authority) and the transfer of assets and liabilities. There is reference to considering assets directly linked to care delivery, in relation to question of whether ownership or leases will be transferred to new care boards however, this is non-committal and creates uncertainty with material financial consequences. It is further noted that the capital costs of any asset transfers or ongoing revenue costs are not included in the estimated costs of running care boards. Councils would need assurance that assets currently used for the delivery of care delivery would be

> transferred along with all liabilities associated with them, including all costs of borrowing."

COSLA highlighted concerns around the lack of detail in relation to any transfer of local government assets and liabilities:

> "With no clarity or detail about the financial treatment of assets – particularly whether they would transferred to new ownership or purchased – there may be disincentives for local authorities to invest in them in the meantime. In addition, Council assets may not be easily disaggregated due to increasing co-location and integration of Local Government services, and there are also questions as to how the acquisition, financing and maintenance of the assets will be funded."

In respect of staff pensions for those transferring from local government employment, COSLA said:

> "The FM states that there is the potential for 75,000 staff to be transferred from Local Government to the National Care Service; this would have considerable implications for pension funds both for those that may no longer be able to remain members of the scheme and any impacts on the scheme for remaining members, which also do not appear to have been quantified. This is a very complex issue which will require significant expert consideration to enable accurate assessments and decisions to be made. For example, detailed assessment is required on whether and how this will impact on existing pension schemes, including viability given the Local Government Pension Scheme is a fully funded scheme, and whether or not the National Care Service would be able to be an admitted member of that Scheme."

Aberdeen City Council also raised issues around financing options for the proposed care boards and the implications this could have for future funding and investment during the transitional phase:

> "It is noted too that Aberdeen's HSCP has benefited from the funding from Aberdeen City Council's issue of bonds on the London Stock Exchange. It's not clear whether Care Boards will be able to benefit from access to Council financing options in the future and/or exercise these themselves. Without answers to these then there is little incentive for any further capital investment in social care services as retaining debt or cost implications not being transferred in full are a real risk currently. Any investment currently in progress, that coincides with the Council losing its statutory duties in relation to services, must call into question how this would be funded to completion beyond implementation date of NCS. If not completed, there would be no basis for the Council to exercise the power to borrow or for Prudential Indicators to reflect such commitments."

South Ayrshire Council and Integration Joint Board also noted concerns around the impact of uncertainty on capital investment plans during the transition phase.

Many other organisations raised concerns around the treatment of local government assets and liabilities and the TUPE implications relating to the transfer of staff. These included SOLACE, Renfrewshire Health & Social Care Partnership, Aberdeen City Council, Aberdeen City Health and Social Care Partnership, East Lothian Council, West Dunbartonshire Health and Social Care Partnership, West Lothian Council, Scotland Excel, CIPFA IJB CFOs, Shetland Integration Joint Board, South Ayrshire Council and Integration Joint Board, Glasgow City Health and Social Care Partnership, Angus Council, Argyll and Bute Council, CIPFA Directors of Finance, North Ayrshire Council and North Ayrshire Integration Joint Board, City of Edinburgh Council, Aberdeenshire Health & Social Care Partnership, East Lothian IJB, Highland Council, Scottish Borders Council, Audit Scotland, Scottish Borders Health & Social Care Integration Joint Board, Aberdeenshire Council.

Wider impact on businesses and third sector organisations

The FM states that:

> "It is not anticipated that the establishment of the NCS and care boards, and the transfer of functions to those bodies, will have any financial implications for any other public bodies, businesses or third sector organisations, or for individuals"

As such, no costs for these bodies are presented in the FM.

In relation to the FM's assessment that there would be no impact on third sector organisations, Scottish Care said:

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

Support in Mind Scotland also commented on this:

> "Support in Mind Scotland is concerned that the financial memorandum does not account for additional funding for the third sector. If the third sector is to be considered an active partner in the NCS then this must equally be demonstrated through funding.
>
> …As has been previously discussed, a new system for health and social care records will potentially result in financial implications for the third sector – this includes the different IT systems used by social care staff across public social care and the third sector, and the chosen software to host the records. In order to have access to these records Third Sector social care providers may be required to update their systems and use new software's which would necessitate the suitable resourcing and funding. Similarly, new legislation

> comes with new procedures and practices which will require staff to be trained to ensure services are effective, consistent, and meeting the rights of services users. Support in Mind Scotland call for the Financial Memorandum to explicitly state that the Third Sector will receive funding or the relevant resources for both financial implications. As without there will not be equity of service or consistency throughout the NCS."

ENABLE Scotland said:

> "There is no mention of the impact on third sector providers of new requirements on compliance with the new Information Standard and the new social care and health record. We believe there should be an assessment of what these costs will be and how third sector providers will be supported to meet them."

A number of other respondents disagreed with the assessment that there would be no impact on third sector organisations, including the Health and Social Care ALLIANCE and Mydex Community Interest Company.

The British Healthcare Trades Association also raised the potential impact on procurement practices and costs for businesses:

> "Section 56 [of the FM] says that the Scottish Government doesn't anticipate the establishment of the NCS and care boards will have any financial implications for businesses however it would represent a change to business relationships and , while contracts with external organisations will transfer it's clear there will be wider changes in terms of procurement and Fair Work which may alter requirements and contracts in future. This level of detail is not set out in the Bill and we note "will be subject to separate financial and regulatory impact assessment"."

Specific questions in the Call for Views

This section of the paper considers the specific questions in the call for views. However, common themes that were spread across several questions have already been highlighted above.

Q1. Did you take part in any consultation exercise preceding the Bill and, if so, did you comment on the financial assumptions made?

Of the 92 responding to questions relating to the FM, 57 (62%) said that they had taken part in consultation prior to the introduction of the Bill. However, many of these respondents (33) noted that this had not included any detailed consideration of financial matters, so they did not feel that this had provided an opportunity for meaningful comment on financial issues relating to the Bill.

Dundee City Council said:

> "…the Council did take part in the consultation exercise and made the point that there was no financial information contained in the consultation document about the cost of the National Care Service or how it would be funded, which made it difficult to gauge the scale of proposed investment or assess the adequacy of the investment to deliver the proposed outcomes.

West Lothian Council also noted concerns around the lack of opportunity to comment on financial proposals at the initial consultation:

> "This prior consultation noted that the proposals would have a cost to the public purse but no further information was given on the costs associated with the proposals. Given the significance of what was being proposed, this was very concerning to the council and a wide range of financial issues were raised in the council's response."

Similarly, Angus Council said:

> "The Council responded to the "A National Care Service for Scotland – Consultation" which ran from August to October 2021 and highlighted at that time the concerns about the lack of detail to assess the financial implications in that consultation.
>
> Our expectation was that the Bill and Financial Memorandum would provide more of the detail required to enable a better assessment of the financial implications especially for local government but … we consider that significant gaps in detail remain."

SOLACE stated that, in their response to the original consultation:

> "We highlighted the absence of any detailed costing of the proposed service offer to indicate the quantum of additional investment required and absence of any detail on how the finance to meet this investment would be raised. We also highlighted the lack of detail on a medium to longer term financial strategy to ensure that the required budgetary provision maintains pace with demand for the new service offers."

CIPFA noted that there had been "a lack of meaningful consultation and engagement with local government in the development of the proposals in the Bill".

Many others noted that the initial consultation had not provided any opportunity to comment on financial implications of the proposals. These included Glasgow City Health and Social Care Partnership, Argyll and Bute Council, Argyll and Bute Health and Social Care Partnership and Integration Joint Board, Aberdeenshire Health & Social Care Partnership, British Deaf Association Scotland, Shetland Islands Council, the Society of Personnel and Development and North Lanarkshire Council.

Q2. If applicable, do you believe your comments on the financial assumptions have been accurately reflected in the financial memorandum (FM)?

Thirty-eight respondents gave a reply to this question. None of those responding felt that their comments had been accurately reflected in the FM, although 3 respondents felt their comments had been partially reflected. Twenty respondents stated that their comments on the financial assumptions had not been accurately reflected in the FM. A further 11 respondents repeated concerns raised in the first question that there had not been an opportunity to provide meaningful comment on the financial assumptions due to the lack of financial details in the initial consultation exercise.

Q3. Did you have sufficient time to contribute to the consultation exercise?

A total of 63 responses were received to this question. Of those responding, the majority (41 responses, or 65%) felt they had not had sufficient time to contribute to the consultation exercise. Twenty-two respondents (35%) felt that they had had sufficient time to contribute.

SOLACE said:

> “It is the view of SOLACE Scotland that the period of consultation was unnecessarily short given the scale of implications for social work and social care users, carers, staff in the sector, provider organisations and for local government as a whole. It was also carried out at a time of unprecedented pressure on social care and social work services which limited the available capacity to consider and fully respond to such significant proposals, especially when attention needed to be focused on rebuilding the capacity of social care and social work services and on recovery from the impact of the pandemic.”

Q4. If the Bill has any financial implications for you or your organisation, do you believe that they have been accurately reflected in the FM? If not, please provide details.

Sixty-five respondents replied to this question. None of these respondents said that the financial implications for their organisation had been accurately reflected in the FM, and many raised concerns which have been reflected in the analysis above.

Although reflecting issues for another organisation, rather than for itself, CIPFA noted concerns that cost implications for health boards had not been accurately reflected:

> “…no estimates are given for the financial implications of the legislation on health boards. The FM states that “Ministers will also have powers to transfer functions from health boards to the new care boards, and to delegate their own health functions as NCS functions”. It suggests that they are “expected to

> be less significant," however given that many of the associated decisions remain to be taken, this would benefit from further clarification."

NHS Scotland noted that:

> "The potential impact on NHS Boards cannot be extrapolated in full at this stage but create significant uncertainty and therefore risk to NHS Boards' future financial arrangements."

The Care Inspectorate also raised concerns about the potential impact on the organisations:

> "…the financial implications of any potential structural change for the Care Inspectorate, as a consequence of the introduction of the Bill, are not reflected in the Financial Memorandum. It is not clear at this stage whether the National Care Service will have any significant impact on the work of the Care Inspectorate out with what appears in the Bill as introduced."

Q5. Do you consider that the estimated costs and savings set out in the FM are reasonable and accurate?

As with the previous question, there were 65 responses to this question. None of these respondents stated that the estimated costs and savings set out in the FM were reasonable and accurate and most offered further comment. Several respondents stated that their views had been expressed in responses to earlier questions, so gave no further details in response to this specific question.

Where responses were provided, a number of common themes emerged in relation to the reasonableness and accuracy of the FM and these have been covered in the analysis above as many similar comments were also raised in answers to other questions in the call for views.

Q6. If applicable, are you content that your organisation can meet any financial costs that it might incur as a result of the Bill? If not, how do you think these costs should be met?

Fifty-three respondents gave a reply to this question. Only one (Public Health Scotland) stated that they felt their organisation could meet any costs associated with the Bill, but this was due to the fact that they were not anticipating any significant impact on costs or resources for their organisation. The other 52 respondents expressed concerns. These mostly related to issues raised earlier in response to previous questions, in particular, the lack of clarity around delivery models resulting in considerable uncertainty as to how the reforms might affect individual bodies. These have been summarised in the earlier analysis.

East Ayrshire Council/East Ayrshire Integration Joint Board stated that:

> "Local authorities cannot absorb any additional costs that arise because of the introduction of the Bill. If Scottish Ministers wish to progress this policy, they need to resource it adequately, if they are to succeed in their intentions."

Many other local authorities, Health and Social Care Partnerships/Integration Joint Boards that responded also expressed the view that any additional costs could not be accommodated (including Glasgow City Council, Aberdeen City Council, East Lothian Council, Comhairle nan Eilean Siar, Scottish Borders Council, Angus Health and Social Care Partnership, Shetland Integration Joint Board, South Ayrshire Council and Integration Joint Board, North Ayrshire Council and North Ayrshire Integration Joint Board, Argyll & Bute Integration Joint Board, Angus Council). SOLACE also made this point.

Community Pharmacy Scotland commented that it is too early to assess impact due to the lack of detail in the Bill and accompanying FM:

> "CPS believes that there has not been enough information produced to make an accurate assessment of the bill's effects on our organisation or the network of community pharmacies that we represent – it is simply too early to tell."

Q7. Does the FM accurately reflect the margins of uncertainty associated with the Bill's estimated costs and with the timescales over which they would be expected to arise?

Fifty-five respondents provided comments on whether the FM accurately reflects the margins of uncertainty associated with the Bill's estimated costs and with the timescales over which they would be expected to arise. Most felt that the margins of uncertainty were only to be expected, given the lack of detail in the Bill.

Specifically in relation to timescales, CIPFA noted:

> "The proposed timescales (where they are provided) appear challenging considering the extent of the powers contained in the Bill, the uncertainty regarding aspects of implementation, the scale of structural change involved and the immense pressures already on the health and social care sector arising from Scotland's recovery from the pandemic, as well as the existing challenges of workforce shortages, demand for services and pressure on the provider market."

Angus Council also felt the timescales were optimistic:

> "The timescales for delivery of the proposed changes when set alongside the scale of further work required to determine issues such as staff transfer arrangements are potentially optimistic. There is a risk that the transition period and costs arising will be much higher than projected."

The Fraser of Allander Institute noted that there was no clear rationale for the assumptions made around inflation and that – given the current volatility in prices – using a range of inflation assumptions could be more appropriate. Audit Scotland made similar points around the outlook for inflation and the additional uncertainty this presents. Inflationary pressures – and potential impacts on costings – were also mentioned by the British Healthcare Trades Association and Aberdeen City Council.

Audit Scotland also noted the costs that had not been included in the FM and would add further to the uncertainty attached to the costings:

- the costs of any national care boards
- transition costs for Local Authorities and Health Boards, including double running.
- the impact of changes to VAT treatment
- the impact of any changes to pension scheme arrangements and associated contribution costs arising from pay harmonisation/ rationalisation
- the extent of potential changes to capital investment and maintenance costs
- the cost of the health and social care information scheme.

On the other hand, Community Pharmacy Scotland felt that the FM was sufficiently clear about margins of uncertainty (but that, as a result of the uncertainty, the estimates “cannot be taken as an accurate projection of costs”).

The Royal College of Physicians of Edinburgh also felt that the costings were reasonable on the basis of what is currently known, but that further information would be helpful as more detail emerges:

> “The RCPE considers that [the cost estimates] are generally accurate based on current knowledge and information but understands the Scottish Government will need to monitor these costs very closely going forward.”

Given the uncertainties inherent in the costings, the CIPFA IJB CFOs suggested that revised costings should be presented as the Bill progresses:

> “Given the level of uncertainty and lack of information the FM is of very limited use at this point in time. It is essential that much more robust costings and timeframes are provided as the bill progresses to give confidence that the NCS is best value and the most effective way of delivering care for service users..”

The Renfrewshire Health & Social Care Partnership, East Lothian IJB and Aberdeenshire Health & Social Care Partnership expressed similar views.

Nicola Hudson, Senior Analyst, Financial Scrutiny Unit, SPICe Research

October 2022

Annex A: Questions for call for evidence

The Call for Views in relation to the National Care Service (Scotland) Bill included a number of questions specific to the Financial Memorandum (FM). These were the standard questions asked by the Finance and Public Administration Committee when seeking views in relation to scrutiny of FMs, which are as follows:

- Did you take part in any consultation exercise preceding the Bill and, if so, did you comment on the financial assumptions made?
- If applicable, do you believe your comments on the financial assumptions have been accurately reflected in the financial memorandum (FM)?
- Did you have sufficient time to contribute to the consultation exercise?
- If the Bill has any financial implications for you or your organisation, do you believe that they have been accurately reflected in the FM? If not, please provide details.
- Do you consider that the estimated costs and savings set out in the FM are reasonable and accurate?
- If applicable, are you content that your organisation can meet any financial costs that it might incur as a result of the Bill? If not, how do you think these costs should be met?
- Does the FM accurately reflect the margins of uncertainty associated with the Bill’s estimated costs and with the timescales over which they would be expected to arise?