

# Education, Children and Young People Committee

## 27<sup>th</sup> Meeting, 2022 (Session 6), Wednesday 9 November 2022

### National Care Service (Scotland) Bill – Panel 1

#### Introduction

At its meeting on 5 October 2022, the Committee considered its approach towards scrutiny of the National Care Service (Scotland) Bill and agreed its final approach via correspondence on 7 October 2022.

#### National Care Service (Scotland) Bill

[The National Care Service \(Scotland\) Bill](#) establishes the National Care Service.

The Bill allows Scottish Ministers to transfer social care responsibility from local authorities to a new, national service. This could include adult and children's services, as well as areas such as justice social work.

Scottish Ministers will also be able to transfer healthcare functions from the NHS to the National Care Service.

The Bill was introduced on 20 June 2022.

The Bill is accompanied by a [Policy Memorandum](#), [Explanatory Notes](#) and a [Financial Memorandum](#). Other documents relating to this Bill are available on the [Scottish Parliament's website](#).

#### Committee Meeting

This morning, the Committee will hear from two panels. The first panel is comprised of practitioners and the Regulator and the second will examine the Bill from a legal and human rights perspective.

#### Other Committees scrutinising the Bill

The ECYP Committee is a secondary committee, tasked with examining the elements of the Bill relating to children and young people's services.

The lead Committee is the Health, Social Care and Sport Committee. The Local Government, Housing and Planning Committee is also a designated secondary Committee.

## **Supporting information**

A SPICe briefing, prepared for this session, is included in [Annexe A](#) of this paper. This briefing provides information on the issues being considered at this evidence session including—

- The National Care Service Bill As Introduced
- The potential inclusion of Children’s Services
- Overview of Children’s Services
- Financial Impact
- Research

Submissions have been received from the COSLA and the Care Inspectorate. These are provided at [Annexe B](#).

A [SPICe briefing](#) is also available online which looks at the Bill as a whole.

**Education, Children and Young People Committee Clerking Team  
4 November 2022**

## Annexe A

The logo for SPICe, featuring the text 'SPICe' in white on a purple-to-blue gradient background.

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An t-Ionad Fiosrachaidh

# Education, Children and Young People Committee

**Wednesday 9<sup>th</sup> November 2022 (Session 6)**

## **National Care Service Bill – Stage 1 Scrutiny – Practitioners and the Regulator**

### **Introduction**

The [National Care \(Scotland\) Bill](#) was introduced on 20 June. The Committee agreed to hear from four witness panels on this Bill, before hearing from the Minister for Children and Young People and the Minister for Mental Wellbeing and Social Care.

The Committee will hear from two panels this morning focusing on the impact of the Bill on children's services. Five other Committees are looking at this Bill.

- [Health and Social Care Committee](#) are the lead committee. They have held a [call for views](#) on the Bill, receiving 215 responses, and informal engagement events over the summer. Formal evidence sessions started on 25 October.
- Social Justice and Social Security Committee. Evidence starts on 10 November with a focus on social justice issues.
- Local Government, Housing and Planning Committee. Evidence sessions started on 8 November.
- Finance and Public Administration Committee. Evidence sessions started on 25 October, focusing on the financial memorandum.
- Delegated Powers and Law Reform Committee will consider the regulatory making powers in the Bill.

### **National Care Service Bill as Introduced**

In September 2020, the Scottish Government commissioned [the Independent Review of Adult Social Care \(IRASC\)](#), chaired by Derek Feeley and supported by an Advisory panel of Scottish and international experts. While the [Independent Review of Adult Social Care \(Feeley review\)](#) recommended the establishment of a National

Care Service (NCS) which would bring together all adult care services, a systematic review has not been carried out on children's services.

In a [letter to the convener of the Education, Children and Young People Committee](#) the Cabinet Secretary for Health and Social Care said:

“The Scottish Government recognise that a systematic review has not been carried out on children's services, as it has for adult social care, and that further work is needed to allow an informed decision to be made on whether children's social work and social care should transfer to the NCS. A formal review, like the Feeley Review, is not planned for children's services – instead we intend to gather evidence to understand the best delivery model for children's services. This model will be one which achieves improved outcomes for children and young people and will help deliver our commitment to Keep The Promise.”

Taking a human-rights based approach, the review recommended improvements to adult social care, focussing on people who use social care support services, their carers and families, and the experiences of those who work in the social care sector.

The review recommended three things that must change in order to secure better outcomes:

- A shift in the paradigm by challenging some of the prevailing narrative around social care support and underpinning a human-rights based approach.
- Strengthening the foundations that are already in place and closing the gap between policy and implementation. Nurturing and strengthening the social care workforce and supporting the contribution from unpaid carers.
- Redesigning the system to establish a NCS to provide a consistent service across the country, set national standards and drive national improvements, improve integration with the NHS and bring national oversight and accountability to social care support.

The IRASC report was published on 3 February 2021. Although it focussed on adult services most Integration Authorities have delegated authority for a wider remit that may include health, children and families, and justice delivery. The report recognised that adult social care support does not stand alone and has strong links to wider services, such as social work and children's services.

The [Policy Memorandum](#) states:

“The Scottish Government is determined that social care and social work services should deliver consistent, high-quality support to every person who needs it, across Scotland. Those services must have human rights at the heart of the system, enabling people to take their full part in society and live their lives as they want to... The Scottish Government's vision for the National Care Service is that it will: ...provide services that are co-designed with people who access and deliver care and support, respecting, protecting and fulfilling their human rights.”

It goes on to say access to social care support will be available to everyone in Scotland in consistent form, will increase prevention, early intervention and in a way that ensures it is human-rights based and outcomes-focused. It also says the NCS will take account of 'the importance of local decision making and flexibility'.

## **Inclusion of Children's Services**

Section 27 of the NCS Bill as introduced enables Scottish Ministers to have the power to transfer functions from local authorities to themselves. The Bill itself does not transfer any functions, but rather gives Ministers the power to do so in future.

To this end, section 27 of the Bill would give Ministers the power to partly or wholly transfer a wide range of children's services functions from local authorities to themselves or a care board through regulations.

Section 30 of the Bill does require that before making regulations to which section 27 applies, Scottish Ministers must consult publicly on the effect of bringing children's and justice services into the National Care Service.

Ministers would then have the power through a Scottish statutory instrument to introduce regulations to transfer children's services into the NCS, rather than through primary legislation. They would however be required to lay before the Parliament a summary of— (a) the process by which they consulted in relation to the function transfer that would be effected by the regulations contained in the draft instrument, and (b) the responses they received to that consultation.

Section 46 provides for regulations under section 27 to be subject to the affirmative procedure and allows those regulations to modify Acts of the Scottish or the UK Parliament. This means that if, for example, a function was being transferred from a local authority to a care board for all purposes, regulations under section 27 could amend the Act that establishes the function to replace its references to a local authority with references to a care board.

The Parliament's powers to influence these regulations, or any regulations, are limited, when compared with the scrutiny of a Bill, where amendments can be made. More information is provided on the use of framework legislation in the second briefing paper for panel two of today's session.

As previously stated, these regulations would be made under the affirmative procedure. Section 30 of the Bill adds additional requirements. This makes it a precondition of any transfer, that Scottish Ministers first carry out a public consultation and report back on the findings to the Scottish Parliament.

### ***What is meant by children's services?***

Children's services are defined under section 30(4) as those provided to:

- people under 18
- people 18 or over "on account of the local authority having provided a service to, or in relation to, them when they were under 18 years of age".

Only certain functions could be transferred, those conferred by the Acts listed in Schedule 3. The functions in these Acts are wide-ranging in scope which suggests the Bill would confer significant powers and could remove a wide range of functions from local authorities. Very broadly the functions could be summarised as children's social work and social care services, children's and adolescent mental health services, youth justice services and support for young carers.

Below is a list of examples of the functions that could be transferred:

- Foster care, children's residential care including short break services, adoption and kinship care, secure care accommodation.
- Local authority functions in relation to the Children's Hearings system – e.g. the duty to implement the decisions of the Hearing.
- Duties to plan children's services.
- Self-directed support for children and families or social care support for children in need.
- Support for children affected by disability, such as the duty to carry out assessments of need.
- Youth Justice Services.
- Discretionary powers to make payments and provide support to vulnerable children (eg 'children in need' under [Children \(Scotland\) Act 1995](#) and 'children not living with their parents' under the [Children Act 1975](#)).
- Support for care leavers: aftercare, throughcare and continuing care.
- Support for young carers, including the introduction of young carers statements.
- Children's and Adolescent Mental Health Services.

The [Scottish Government's National Care Service consultation](#) included a broad definition of 'children's services', stating:

“By children's services we mean any service provided to or for the benefit of children by either a local authority, Health Board, Third Sector, or commissioned provider, including those who are leaving or have left care, children with complex health conditions, young people involved in offending behaviour, or those with additional support needs.”

However, the proposal within the original consultation itself appeared to be more limited, “our proposal therefore is that children's social work and social care services should be located within the NCS”.

The regulation making powers in the Bill would appear to allow the Scottish Government in theory to go beyond the scope children's social work and social care services. In particular, early learning and childcare is a function included within the

Bill (functions provided under Part 6 of the [Children and Young People \(Scotland\) Act 2014](#)). However, it does not appear that the consultation intended it to be in scope with no mention of services provided by a local authority as the education authority being considered, the Scottish Government noted:

“We need to retain and strengthen the existing links with Education and Early Learning and Childcare.”

## Consultation Responses

The Scottish Government’s recent [analysis of responses](#) on the possible scope of the NCS suggested that most respondents agreed that children’s services should be included in the NCS.

The consultation asked four questions specifically related to children’s services:

1. Should the National Care Service include both adults and children’s social work and social care services?
2. Do you think that locating children’s social work and social care services within the National Care Service will reduce complexity for children and their families in accessing services?
3. Do you think that locating children’s social work services within the National Care Service will improve alignment with community child health services including primary care, and paediatric health services?
4. Do you think there are any risks in including children’s services in the National Care Service?

However, members should note that many stakeholders did express concerns about the proposals to include children’s services, particularly around the lack of detail in the bills current form to inform their responses. Further analysis from The Promise highlighted in the committees second paper for this session suggested organisations and individuals’ views on the proposal to include children’s services in an NCS are complex and nuanced. Around half of the organisational responses analysed indicated it was not possible to say at this stage whether children’s services should be included.

Reasons commonly cited in favour of the inclusion of children’s services included themes such as:

- Parity of pay for staff, foster carers and kinship carers
- An alignment with a “cradle to grave” approach
- It would help ease the transition between children’s services and adult services - and create a more joined up approach
- Improved information sharing between health care and children’s services
- Greater standardisation across Scotland and consistency across the country.

CELCIS in their response stated:

“Currently, every local authority in Scotland has a different system for recording information. These isolated local practices, and even variations within a local area or teams, can cause barriers to sharing information that are highly localised and can result in more disruption than necessary when a child (or their family) is supported by different services and through multiple agencies. Furthermore, should the child or their family move to if a different local area or are being supported in multiple local areas, any such disruption is likely to be compounded even further... National approaches to recording and data collection in social work could then support greater equality of experience and consistency across the country.”

However, concerns about the inclusion of children’s services were also raised by several organisations including:

- Disrupting the continuity of services provided by local authorities for example between children’s services, housing, and education
- A desire not to introduce too much complexity
- Concerns around resourcing
- The safety and welfare of children where statutory responsibilities sit across two separate organisations
- Whether structural changes will lead to improved outcomes for children and families.

Responses suggested that there needed to be more evidence of potential benefits to other services, like children services, and evidence for what was currently working well and should be maintained. Those who disagreed with the wider scope were concerned that a large NCS would be too centralised and not reflect the local requirements for children’s services.

Social Work Scotland, for example, stated:

“This is too complicated a question to simply provide a ‘yes’ or ‘no’ answer. The implications of either response are profound, not just for social work, but for children’s services as a whole. We accept that there is no status quo option... change is guaranteed for every local authority in Scotland... The question is therefore whether these specific proposals represent reform likely to provide social work and its partners with an enabling context within which to affect meaningful, positive, sustainable change for children and families... As the Promise Scotland has framed it: will it help us keep the Promise?”

The Promise, the Care Inspectorate and others highlighted the need for more evidence in relation to this proposal. The Care Inspectorate said:

“We have not seen evidence that bringing children’s services into a National Care Service developed in response to an adult social care review will address difficulties in the system. It is not clear that children and families experience better outcomes in areas of the country where children’s services are the responsibility of an integration authority rather than a local authority.”



Both SOLACE and COSLA did not support the inclusion of Children's Services within an NCS. COSLA's opposition to a National Care Service, as it appears in the Bill, has been clear and consistent since the Scottish Government published its consultation document back in August 2021. Shortly after this, the then COSLA President, Councillor Alison Evison, told the Local Government, Housing and Planning Committee that "in many ways, the proposed national care service is an attack on localism, communities and place-based work". COSLA in their consultation response said:

"COSLA is clear that Children's Services, including the social work workforce, should remain within Local Government. The inclusion of children's services within the National Care Service consultation goes beyond the scope of the Independent Review of Adult Social Care. It is a significant concern that the proposals in the consultation have been brought forward without any scoping, discussion and crucially without seeking the views of children and young people, their families or indeed those working with them."

## Overview of Children's Services

The [Public Bodies \(Joint Working\) \(Scotland\) Act 2014](#) provided the framework for the integration of health and social care services in Scotland. The way health and social care services are planned and delivered across Scotland was changed by the Act.

Local authorities and NHS boards are required by law to work together to plan and deliver adult community health and social care services, including services for older people. The Act had the aim of ensuring health and social care services are well integrated, so that people receive the care they need at the right time and in the right setting, with a focus on community-based, preventative care.

The new bodies, 31 integration authorities (IAs), which were mostly established as integration joint boards (IJBs), were created as separate legal entities, responsible for commissioning and a wide range of health and social care services across the partnership area. Highland is the only area to adopt a "lead agency" arrangement, with the chief executive of NHS Highland having responsibility for adult health and social care services and the chief executive of Highland Council having responsibility for children's health and social care services. This means there is no separate integration joint board, nor a chief officer or chief finance officer.

Each IA differs in terms of the services they are responsible for and the local needs and pressures they face. At a minimum, IAs need to include governance, planning and resourcing of social care, primary and community healthcare and unscheduled hospital care for adults.

The Act allows local authorities choice in the integration of children's social work and social care services ("children's services") with other services, by delegating those services to Integration Authorities. As a result, some local authorities have chosen to do so, and others have not. Where children's services are not delegated to an IJB they have remained within the local authority, often within the Education Department.

Health boards have also taken different approaches to the integration and delegation of children's health services. Some health boards have delegated all of their community health services for children and Child and Adolescent Mental Health Services, others have delegated some services for children, while other health boards have not delegated any. This has resulted in a varied landscape across Scotland for delivering children's services and health services; some Integration Authorities are operating with full delegated powers for children's health, social work and social care services, whilst some include none of these services.

Nineteen local authorities have at least some health services for children delegated to them by health boards, fifteen are responsible for Justice Social Work and ten have children's social work and social care services delegated to them by local authorities. The establishment of the NCS will therefore affect the current operational approaches of some local authorities' children's services.

For example, even if powers over children's services are not transferred to Scottish Ministers within the Bill and the current duties and responsibilities remain with local authorities in accordance with current legislation, the creation of the NCS will impact on IJBs. This would lead to change at local level for the areas which have delegated children's services to the IJB. If the NCS Bill is passed by Parliament, IJBs will no longer exist once the NCS becomes operational. For the IJBs which have children's services within their remit, and for Highland which has a lead agency model, change would be required.

In their [Policy Memorandum](#), the Scottish Government set out the rationale for consulting on the inclusion of children's services:

“A number of reports and inquiries in recent years have identified the need for improvement in children's services. These factors and the changed landscape of social work and social care services which the NCS will create alongside the interdependency between adult care and children and their families, have led the Scottish Government to consider whether the NCS should also include children's services. The interface with services for adults is a critical consideration in relation to the provision of children's services. It can be particularly difficult to separate out social work support for adults from the social care needs of the children who live with them – of children who are in the child protection system, the majority are there as a result of parental factors, including drug and/or alcohol use, mental health and involvement in the justice system. If the NCS includes adult social services only, this could have adverse consequences for the provision of holistic family services. In many areas there are existing concerns around access to and communication between adult and children's services where the adult's behaviours may be posing a risk to the child.”

Local authorities have a duty to provide support to children who are 'looked after' by them, as set out in the [Children \(Scotland\) Act 1995](#). This includes a duty to "safeguard and promote" the child's welfare.

As at [31 July 2021](#), 14,946 children in Scotland were looked after or on the child protection register. 13,255 children were looked after, 2,104 were on the child protection register, while 413 children were included in both categories.

Figures for the number of disabled children in Scotland vary. The [pupil census for 2021](#) records that 16,001 school pupils have been assessed as having a disability while 1,288 children with known disabilities were looked after at 31 July 2021.

Developed in pathfinder areas since 2006, GIRFEC was implemented as a national approach to supporting children's wellbeing across Scotland in 2011. [The Children and Young People \(Scotland\) Act 2014](#) gave certain elements a statutory basis. GIRFEC aims to bring a child-centred approach to children's service provision and decision making, reflecting the principles of the United Nations Convention on the Rights of the Child.

The GIRFEC approach is:

- child-focused, ensuring the child and their family is at the centre of decision-making and support
- based on understanding of the child's wellbeing in their current situation
- built on early identification of need
- reliant on joined-up working.

In terms of the care system, GIRFEC principles mean that decisions about a child or young person should be based on an understanding of needs and wellbeing, with co-ordination between services and a focus on early intervention. Each child in need of extra support should have a [child's plan](#). This keeps record of why the plan is in place, what needs to improve for the child, and planned actions. Multi-agency activity is co-ordinated by a Lead Professional; for children in need of care and protection, this is usually a social worker.

Part 4 of the [Children and Young People \(Scotland\) Act 2014](#) makes provision for every child in Scotland to have a 'named person' to act as a first point of contact for children and families seeking information or advice about a child or young person's wellbeing. Following a [successful legal challenge](#), the provisions have not been brought into force and the Scottish Government intends to repeal the relevant legislation. However, as a key element of the national GIRFEC approach, in many local authorities children under 18 do have a non-statutory key point of contact known as the 'named person'. For pre-school children, the named person will usually be a health visitor and for school aged children it will likely be a senior, deputy or head teacher.

## Financial Impact

After education, social work and social care is the second largest area of local government expenditure, with councils spending over £3.5 billion of their net revenue expenditure on social services in 2020-21.

The [Financial Memorandum](#) highlights that further work is required to consider the full extent of the costs that would be associated with the transfer of services for children, and the transfer may be phased over a longer period. However, since no decisions have yet been taken on such phasing, the figures in table 1 assumes that the NCS will take on the full range of services from the start.

Such a transfer of children’s services will have major budgetary, staffing, policy and governance implications for local authorities, and council submissions to the Parliament’s Health, Social Care and Sport Committee all raise concerns about the various ways they may be impacted.

**Table 1:** Costs of providing services that could be transferred to care boards (£m)

	2019-20	2020-21	2021-22	2022-23	2023-24	2024-25	2025-26	2026-27
Children’s and Families	992	1032	1084	1186	1298	1363	1432	1505

Providing written evidence to the committee the Care Inspectorate reflected on the need for financial resource:

“However, reflecting on NHS performance, we suggest that a single national service will not in itself bring equality of experiences and outcomes, but we acknowledge the potential for greater standardisation and coherence that the National Care Service could deliver. This will be dependent on how the Bill is interpreted on the ground, consistent implementation, how well it is resourced and how well it is monitored.”

COSLA highlighted concerns:

“The valuable cost and time required, as a result of new legislation, to establish new structures and governance would be better allocated to improving existing structures and injecting much needed resource into underfunded local services, enabling the extensive work which is already underway in local areas to keep The Promise to continue and be accelerated.”

## Research

Stakeholders repeatedly noted their concerns at a lack of “evidence base” when reflecting on the inclusion of children’s services in the NCS responding to both the Scottish Government’s consultation response and the Health and Sports call for views.

Who Cares Scotland recently co-delivered a session seeking the views on the NCS, which eight people with care experience attended, alongside partners from the Scottish Government and The Promise. Themes of community, early intervention and relationships were common when discussing what the NCS might look like for people with care experience. Services should be available in local communities, and “those communities should be involved in the opening and running of the service.”

Key recommendations were made:

1. Ensure that the NCS creates opportunities to respect, protect and fulfil the rights of Care Experienced people throughout their lifetime. The NCS must be a named Corporate Parent, and its Corporate Parenting duties should be applicable to all Care Experienced people regardless of age, to recognise that care experience stays with you after you turn 26.
2. Provide universal access to sustainably funded Independent Advocacy services, available to anyone who requires them across their lifetime, as part of ensuring prevention, early intervention and access to justice; recognising that provision must be tailored to specific groups, including Care Experienced people.
3. Ensure a NCS ends ‘postcode lotteries’ and enables children and young people to receive the same level of support when moving between Local Authorities.
4. Base services in communities and offer both formal and informal support, with a focus on relationship-based practice, building consistent and trusting relationships with individuals, families, and communities.
5. Improve communication and information-sharing between services. In order to embed equality and human rights for Care Experienced people, the Scottish Government should require better data collection about health, social care and wellbeing outcomes to identify and tackle inequalities.
6. Ensure that the workforce is trauma-informed in all areas of practice. There should be time and resource to connect with families, listen to and include them in decision-making, and tailor support to help families stay together.
7. Ensure services represent all placement types and are inclusive of people who are adopted and who may experience adoption breakdown.

CELCIS, the Centre for Excellence for Children’s Care and Protection, has also been asked by the Scottish Government to undertake research to improve the understanding of the current service delivery models in Scotland and internationally and their effectiveness in supporting the needs of children and their families.

The research will gather evidence to help inform how best to deliver children's services in the light of the introduction of the National Care Service. The research will consider the best way to Keep The Promise and improve outcomes for children, young people and families. The purpose of the research is to answer the question:

“How do we ensure that children, young people and families get the help they need, when they need it?”.

CELCIS will be conducting five strands of research:

1. Rapid Evidence Review of published literature
2. ‘Deep Dive’ to examine the approaches to integration and delivery of children’s services taken in a range of high-income countries
3. National scoping and mapping study to explore the different models of integrated service delivery and any potential effects on a range of outcomes.
4. National surveys of the Children’s Services workforce and Children’s Services leaders to build on the emerging findings from the national scoping and mapping study.
5. Targeted focus groups/interviews with professionals to explore and better understand the findings from Strands 3 and 4.

An Independent Steering Group for Children’s Services Research has also been established to provide independent oversight of the research. The Minister for Children and Young People, Clare Haughey MSP, has appointed Professor Brigid Daniel, Professor Emerita at Queen Margaret University, as the Chair of the Steering Group. Professor Daniel is joined by 11 further members from academic and practice backgrounds.

Members may wish to note that the research is not expected to conclude until Autumn 2023 with a report published thereafter. While expressing their support for the work, COSLA in their submission to the committee, highlighted they would have liked to have seen the research process be carried out before legislation was brought forward to inform the bill.

## Young Carers

Section 38 amends the [Carers \(Scotland\) Act 2016](#) to provide a right to breaks for carers. At the time these 2016 provisions were described as placing:

“a duty on local authorities so that, in determining which support to provide to carers, they must consider in particular whether the support should take the form of a break from caring.” ([Policy Memorandum to Carers \(Scotland\) Bill](#))

The Policy Memorandum to this new bill describes the 2016 provisions but notes that:

“Despite the above rights, relatively few unpaid carers (around 3%) receive statutory support for breaks from caring.”

This Bill would introduce new duties on local authorities. The Explanatory Notes state that the provisions:

“ensure that carers get the support that they need to take sufficient breaks from providing care to cared-for persons.”

Specifically, the Bill provides that young carer statements must make provisions to include:

- An outcome that the carer can take sufficient breaks.
- If they are not so able, the local authority must “identify the need for support to enable” them to take sufficient breaks.
- Information about that support must be included in the statement.
- The local authority must: “provide support to the carer to meet any need for support to enable the carer to take sufficient breaks from providing care for the cared-for person” that has been identified in their plan. (Section 38(8)(e) amending section 24 2016 Act).

[The Scottish Government accepted the Feeley review recommendation that:](#) “Carers should be given a right to respite [...] and a range of options for respite and short breaks should be developed.”

The policy memorandum describes the favoured option from consultation as being;

“easy-access support for carers with low levels of need and the option of personalised breaks support under the Carers (Scotland) Act 2016 for those in more intensive caring roles.” (PM para 209).

This right to a break applies to those with Young Carer Statements (YCS). The FM assumes that this will build up over time so that ten years after implementation (2034-35):

- 64% of young carers will have Young Carer Statements

Of those, all young carers will get ‘an activity enabling break’, and the number proportion of adults getting a break increases according to the hours of care they provide.

**Nicole Beattie, Senior Researcher, Further and Higher Education, Children’s Services, SPICe Research**

**4<sup>th</sup> November 2022**

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## Annexe B

# COSLA, National Care Service (Scotland) Bill – Children’s Services

9<sup>th</sup> November 2022

1. This submission highlights Local Government’s key concerns around the proposed future inclusion of Children’s Services into a National Care Service. We hope that this provides useful information for the Committee as it considers this matter.

### **Background – National Care Service (Scotland) Bill**

2. COSLA agrees that more needs to be done to realise our collective ambition that Scotland is the best place in the world to grow up, and therefore we remain fully supportive of continuing the refresh and implementation of GIRFEC, embedding the UNCRC into domestic law and working collaboratively to deliver The Promise. This will take us forward in our shared commitment to improve experiences and outcomes for children and their families, and plans are in place which reflect the critical role of Local Government.
3. Local Government has fundamental concerns about what is being proposed within the National Care Service (Scotland) Bill:
  - We are strongly opposed to the transfer of Local Government functions, staff, and assets, which the Bill empowers Ministers to make.
  - The Bill and Financial Memorandum fail to tackle the crucial issue of underfunding of the social care system.
  - The proposals present profound risks to local democratic accountability and local delivery of services.
  - The costly and unnecessary structural change being proposed will distract from, and delay the progression of improvements in the system which are required now, as outlined in the [COSLA/ Scottish Government Joint Statement of Intent](#).
4. COSLA believes that Children’s Services and Justice Services should remain in Local Government, where they benefit from critical integration with other council functions. Our key concerns about the proposed inclusion of Children’s Services are outlined in this submission.

### **Inclusion of Children’s Services**

5. We are of the firm belief that Children’s Services, including social work, should remain within Local Government and adequate resource provided to deliver the services, support and development of the workforce to improve



outcomes for children and families. We are continually striving to make sure that the way in which services are delivered is the very best it can be.

6. The views of children, young people and their families were not sought regarding the inclusion of Children's Services in the consultation on the National Care Service proposals, which preceded the Bill. The inclusion of Children's Services within the National Care Service consultation, and subsequently in the Bill, also goes beyond the scope of the Independent Review of Adult Social Care. The absence of an authentic evidence base for the proposed inclusion of Children's Services is a cause of significant concern.
7. COSLA welcomed the Scottish Government's commitment to undertake further consultation work before making a final decision on the inclusion or otherwise of Children's Services within the National Care Service. COSLA and Local Government will be active participants in this research that Professor Daniel is overseeing, informing it, implementing learning as it emerges, and ensuring the voice of Local Government is included and documented. It is our view that this should have been carried out prior to the development of legislation which has introduced uncertainty across the system.

#### Impact on Keeping The Promise

8. COSLA believes that the primary focus for Children's Services during this parliamentary term, and beyond, should be delivering on what the Independent Care Review told us is required to ensure that children grow up 'loved, safe and respected', as set out in The Promise. The Independent Care Review, which was based on evidence, data, and the voice of those with lived experience, did not conclude that a National Care Service should be established which includes Children's Services, but, instead, concluded that change should take place locally.
9. COSLA and its 32 member councils are fully committed to Keeping The Promise and to delivering on the changes required throughout Plan 21 – 24 and beyond. In April 2022 COSLA published '[Two Years On...Local Government's Work to #KeepThePromise](#)', which demonstrates the breadth of service redesign and transformation; increased and innovative engagement with children and families; new models of family support; examples of workforce development; and multi-agency and multi-disciplinary partnership approaches across Scotland.
10. We are profoundly concerned that the continued and lengthy uncertainty of the future of Children's Services will severely impact on Scotland's ability to Keep The Promise by 2030. The centralised responsibility for a National Care Service would remove the local flexibility required to design and deliver services to meet the needs of children and families. The valuable cost and time required, as a result of new legislation, to establish new structures and governance would be better allocated to improving existing structures and injecting much needed resource into underfunded local services, enabling the extensive work which is already underway in local areas to keep The Promise to continue and be accelerated.

### Impact on other key service areas

11. COSLA is particularly concerned that the Bill makes no mention of the statutory responsibilities of local authorities for both public and child protection, nor corporate parenting. Should education, and other universal services, remain within local authorities and Children's Services placed within a National Care Service, there could be significant implications and unintended consequences for the safety and welfare of children where vital services, and statutory responsibilities, sit across two separate organisations.
12. The consequences of removing a large part of Children's Services will introduce fragmentation with key universal services such as early learning and childcare, education, housing and community services. There is a risk that this will have the consequence of fracturing current integrated working.
13. There is a need to recognise the fundamental relationship between education and Children's Services. Indeed, the Scottish Government and COSLA had previously agreed that education and early learning and childcare should not be delivered separately from Children's Services, given the evident need for joined up delivery in these areas. The separation of children and family's services from education risks undermining progress and impacting on ongoing work to close the poverty related attainment gap, which requires a multi-disciplinary, whole system approach which local authorities are working hard to deliver.
14. Locating Children's Services within a National Care Service could also create further complexity and fragmentation particularly for children with disabilities accessing services. The current approach is that the local authority coordinates a local team around the child. Removing existing supports and linkages of social work and social care to education, housing and other services such as educational psychologists, risks making the system far more complex to navigate for families and young people who would need to navigate across health, local authority and the National Care Service.

### **Conclusion**

15. Whilst there is no evidence base for the inclusion of children's services in a National Care Service, there is a bank of evidence showing both the commitment of local authorities to making positive changes to the way they deliver services for children and families. All 32 Local Authorities have committed to the full incorporation of the United Nations Convention on the Rights of the Child (UNCRC) and are making real progress on this. The impact of the proposals on progress towards implementation of the Promise has been made clear by Local Government and other stakeholders throughout the period of engagement on the National Care Service. The effect of separating Children's Services from universal services such as early learning and childcare and education risks undoing the work that has been undertaken over many years to destigmatise help seeking, through providing support and services in the places people access daily, an important preventative measure.
16. There is no "status quo" when it comes to supporting children, families and communities. Listening, learning, developing and improving services and support is the way in which Local Government operates with partners and

removal of Children's Services to a National Care Service presents real challenge to that approach, which would be of no benefit to children and families.

# Care Inspectorate

## Submission to Education, Children and Young People Committee – National Care Service (Scotland) Bill and Children’s Services

### **Who we are and what we do**

The Care Inspectorate is the independent scrutiny and improvement support body for social care, social work and early learning and childcare services in Scotland. We are committed to providing public assurance in the quality of care and support delivered by individual services, health and social care partnerships and across local communities.

All social care services in Scotland, including early learning and childcare, must be registered with us. We inspect these services, reporting on performance and identifying improvements they need to make. We have powers to enforce change where it is needed. We also investigate and resolve complaints about services.

We take an intelligence-led, risk-based and targeted approach to scrutiny, assurance, and quality improvement support. We rigorously monitor services, gathering and analysing intelligence, which helps to target our approaches effectively and efficiently, as well as helping to shape and influence local and national policy and practice.

Our expert workforce provides scrutiny and support for quality improvement to services every day, sharing information, guidance and good practice to deliver sustainable improvements that lead to high-quality care. Working with our colleagues in social care, social work, healthcare, and education, we are committed to the health and wellbeing of those experiencing care, support and early learning services.

We place human rights and the Health and Social Care Standards at the heart of all that we do so that services and communities are safe places for people to live well and flourish, with their rights, needs and choices respected. Involving people who experience care in our work is essential to inform, influence and improve what we do. We keep equality and diversity central to all we do as we continue to embed our duties of assurance, furthering quality improvement, and involvement.

### **National Care Service (Scotland) Bill**

The Care Inspectorate welcomes the opportunity to comment on the National Care Service (Scotland) Bill and on the proposals to allow children and young people’s health and social care services to be integrated into a new National Care Service in future.

As the official body responsible for inspecting standards of social work and social care, including early learning and childcare (ELC) services, the Care Inspectorate welcomes any policy or legislative development that aims to improve the quality and consistency of social work and social care services in Scotland.

The overall changes being proposed in the Bill will have significant implications for the social care sector, both adult and children's social care and social work services, as well as the ELC sector. The Independent Review of Adult Social Care, which proposed the National Care Service, did not include social work within the scope of its recommendations so it is important to ensure proper review and understanding in this area, being clear that the roles and responsibilities of social work are related to - but distinct from - that of social care.

We see the importance of maintaining the integrity and cohesion of social work services throughout the life journey from early years to adult and older people's services. Any disaggregation of specialist social work services, in the creation of a National Care Service, even in terms of delayed timeframes for integration of some areas of services, would need careful consideration. We need to develop a comprehensive and shared understanding of all the issues involved.

Social work follows the life journey, from birth to old age, and the breadth and depth of the role needs to be carefully considered and recognised to ensure it is given due parity and prominence. Social work professionals have an important range of professional skills and knowledge to support both a preventative approach and crisis management, mutually enabling and protecting individuals. This includes: assessing need; managing risk; ensuring human rights-based and person-centred practice; determining when levels of risk are such that escalation is required to protect people; and ensuring work is carried out in line with the appropriate legislation.

We can see the potential benefits of having all areas of social work placed within the National Care Service, acknowledging the need articulated above for the distinct nature of social work to be considered and understood under any new arrangements. Possible benefits include the potential for more consistency in the delivery of services and more effective use of resources. Having social work, social care staff and key community health professionals working under a single organisation could impact positively on information sharing and support improved cooperation between health and social care professionals and better coordination of care and support.

However, specific consideration needs to be given to the structures and support required for strong, effective professional leadership of social work at the highest levels and in sufficient numbers within the National Care Service and any local community health and social care partnership boards.

We welcome the inclusion of Clause 30 that requires ministers to consult publicly before any proposed transfer of services relating to children's services or justice social work services, and would suggest the evidence base be used to ensure any change delivers benefits. Elements of social work practice are not exclusive of each other, and one family may have input from multiple social work professionals depending on their circumstances and needs – this support should be provided in a joined-up approach, and it is important for this reason that social work is kept together.

We have noted in our other responses on this topic that achievement of the overall aims of the legislation, and key to the success of the policy, will be how it is interpreted on the ground, how consistently it is implemented across the country and how well it is resourced.

The Care Inspectorate is committed to continuing our role in strengthening and ensuring high quality care, regardless of the structure we are part of. We will maintain our vision for world-class social care and social work in Scotland, where everyone, in every community, experiences high-quality care, support and learning, tailored to their rights, needs and wishes.

### **Children's services**

The National Care Service (Scotland) Bill defines children's services under section 30(4) as those provided to:

- people under 18
- people 18 or over "on account of the local authority having provided a service to, or in relation to, them when they were under 18 years of age".

At the time of writing, the Care Inspectorate registers 514 services for children and young people, including:

- 38 adoption services
- 337 care homes for children and young people
- 15 child care agency services
- 59 fostering services
- 60 school care accommodation services
- 5 secure accommodation services.

In addition to scrutiny of and improvement support for children and young people's services, we work with scrutiny partners to take a focused look at children and young people in need of care and protection. Our inspections take account of their experiences and outcomes as a result of the services provided for them by community planning partnerships (CPPs). The Care Inspectorate also has specific responsibilities around a number of serious incidents in social work, such as reviewing the deaths of looked after children, criminal justice social work serious incidents, and learning reviews.

We welcome recognition from the Scottish Government that as the Independent Review of Adult Social Care did not cover children's services, there is not an evidence base which has considered the full range of benefits and/or impacts of a model like the National Care Service for children's services. We welcome the Scottish Government's intention to gather evidence to understand the best delivery model for children's services, and agree this model must be one that achieves improved outcomes for children and young people and will help deliver the commitment to keep The Promise.

In February 2020 The Promise report confirmed the commitment made to Scotland's children that we will achieve radical changes by 2030. Delivering this commitment is an important part of what the Care Inspectorate does. In our corporate plan, we set out our ambition for babies, children and young people, and their families, with experience of care to

- experience high quality compassionate care and support
- have improved outcomes (from the services which support them)
- feel that their rights have been respected and realised.

There are 6 workstreams of inter-related work envisaged as hotspots for our Promise focus. These are:

1. Quality improvement frameworks, inspection methodology and reporting.
2. Participation, engagement and listening.
3. A common understanding, value base and approach across regulators/scrutiny partners.
4. Equipping our inspection workforce.
5. Building and reporting on the big picture.
6. Proposing, supporting and preparing for legislative, regulatory, landscape change.

Our existing work in the areas of [UNCRC](#) and [corporate parenting](#) contribute hugely to the organisation's overall commitment to keep the Promise, and they fit into at least one of the workstreams.

We found it encouraging to read the references in the Bill's child rights assessment to a focus on ethical commissioning regarding person centred and bespoke planning of care for individuals. We also welcome frequent references to the implementation of the UNCRC in Scotland, The Promise and using the Promise Design School model as the prototype for next stages of design for a national care service for adults.

The Care Inspectorate agrees with the aspiration to achieve greater consistency in the experiences and outcomes for children and young people through the creation of a National Care Service. The Care Inspectorate's joint inspection overview reports [2012-2017](#) and [2018-2020](#) have highlighted the differences in experiences and outcomes for people living in different parts of the country.

However, reflecting on NHS performance, we suggest that a single national service will not in itself bring equality of experiences and outcomes, but we acknowledge the potential for greater standardisation and coherence that the National Care Service could deliver. This will be dependent on how the Bill is interpreted on the ground, consistent implementation, how well it is resourced and how well it is monitored.

#### Early learning and childcare (ELC) services

Clause 30 of the Bill requires ministers to consult publicly before any proposed transfer of services relating to children's services or justice social work services to the National Care Service. This is an important provision, which we would welcome. However, it will also be important to ensure that any consideration of the inclusion of children's services in the National Care Service is mindful of the current Scottish Government consultation on the inspection of ELC and school age childcare services.

Scrutiny, assurance and quality improvement support in relation to ELC services is an important part of the Care Inspectorate's role. Neither the Feeley Review nor the Scottish Government consultation on the introduction of a National Care Service made reference to ELC and we strongly suggest that the interaction between ELC and other aspects of social care and social work should be acknowledged.

Children using ELC receive care through a statutory entitlement and should be afforded the same high value as is being placed on health and social care where there are additional needs. It is important that children have access to high-quality ELC (either funded or non-funded) and ELC is recognised as a crucial factor in

children's longer-term outcomes. This should be taken into account when considering the National Care Service. Characteristics of high-quality provision include a high-quality workforce, effective leadership and a strong focus on play-based learning. It is crucial that the regulation and scrutiny of the ELC sector is considered alongside, but not within, the development of the National Care Service.

We would welcome clarification on the Scottish Government's intention to "retain and strengthen the existing links with Education and Early Learning and Childcare", particularly as early learning and childcare is a function included within the Bill (functions provided under Part 6 of the Children and Young People (Scotland) Act 2014).