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The Information Centre  
An t-Ionad Fiosrachaidh

## Education, Children and Young People Committee

**Wednesday 23 November 2022 (Session 6)**

### **National Care Service Bill – Stage 1 Scrutiny**

#### **Introduction**

The [National Care \(Scotland\) Bill](#) was introduced on 20 June. The Committee has been taking evidence for the past two weeks to hear from four witness panels on this Bill.

This week the Committee will take evidence from the Minister for Children and Young People and the Minister for Mental Wellbeing and Social Care.

Six other Committees are also 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 considered the regulatory making powers in the Bill and wrote to the Scottish Government [on 7 November 2022](#) and received a response [on 16 November 2022](#).
- At its meeting on 9 November the Criminal Justice Committee agreed to look at the bill as well.

The Minister for Mental Wellbeing and Social Care, Kevin Stewart MSP, has given evidence to several Committees over the past weeks. On 8 November, [he attended the Finance and Public Administration Committee](#), on 15 November he attended the

Local Government, Housing and Planning Committee, and on 17 November he was at the Social Justice and Social Security Committee.

The Committee's focus is on children's services. The Government has not decided whether it would want children's services to be included in the NCS. The Bill is seeking Parliament to give Ministers a power, should they choose, to bring children's services into the NCS under the affirmative procedure.

The Committee has held two formal evidence sessions on the Bill on [9 November](#) and 16 November.

In addition, on Monday 14 November, the Committee undertook an informal session with stakeholders from a range of organisations including those working with children and young people who are experiencing domestic abuse, care-experienced children and young people, young people in conflict with the law, young carers and children and young people with mental health needs.

Key issues arising from that session included:

- A recognition that even if good policy/legislation is already in place, there is a 'resource-deprived implementation gap', with staff capacity/workload issues contributing to this.
- Stigma and distrust acts as a barrier to children and families accessing services. Poverty also contributes to many social care needs.
- Organisational gate-keeping is unhelpful, as is requiring children and families to prove need in order to access services.
- There is a need to resolve the current 'postcode lottery' (e.g. in terms of accessing independent advocacy)

## National Care Service Bill

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.

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’.

## Framework Bill

The [Policy Memorandum for the National Care Service \(Scotland\) Bill](#) states that:

“...the Bill creates a framework for the National Care Service, but leaves space for more decisions to be made at later stages through co-design with those who have lived experience of the social care system, and flexibility for the service to develop and evolve over time. Some of those future decisions will be implemented through secondary legislation, others will be for policy and practice. Where those decisions are implemented through secondary legislation (under this Bill or through pre-existing powers), financial and regulatory impact assessments will be provided.”

The [SPICe briefing on the National Care Service \(Scotland\) Bill](#) notes that “Since framework bills do not include full details on how a policy will be implemented, legislatures are unable to scrutinise such details at the time of considering a bill.”

The [House of Lord's Delegated Powers and Regulatory Reform Committee](#) (DPRRC) published a report in 2021 in which it states that:

“...far too often primary legislation has been stripped out by skeleton provisions and the inappropriate use of wide delegated powers. This means that it is increasingly difficult for Parliament to understand what legislation will mean in practice and to challenge its potential consequences on people affected by it in their daily lives.”

The SPICe briefing notes that “...it is important that, when scrutinising any primary legislation granting delegated powers, a legislature is content not only with the powers themselves, but also with the procedure which will apply to any future secondary legislation.”

A recent example of framework legislation was the [Referendums \(Scotland\) Bill](#), which set the framework for future referendums. Framework legislation in the context of setting up a new organisation has also been used recently, with the [South of Scotland Enterprise Bill](#). The [FM for the Bill](#) said:

“The Bill sets out the high level aims and powers of the new body. The Scottish Government is taking forward work to develop and agree the detail of the body’s structure, operations and activities based on the overarching aims and powers set out in the legislation.”

So, although not on a comparable scale to the NCS Bill, this does give an example of framework legislation being used for setting up a new body.

Members will be aware that there are limits to the total days of scrutiny Parliament has to consider statutory instruments and that statutory instruments are not amendable by Parliament. The powers within the Bill are not time-limited; a future Government would retain these powers under the procedures set out in the Bill.

Framework legislation has also been used in the past for re-structuring in a health and social care context. The [Public Bodies \(Joint Working\)\(Scotland\) Bill](#) set the framework for the creation of Integration Joint Boards, with detailed measures implemented via secondary legislation. Although there was some level of detail in the primary legislation, there were also decisions that were left to secondary legislation. This legislation involved a much more limited change as it did not involve the creation of new bodies, instead it involved different arrangements for joint working between existing bodies.

The Minister for Mental Wellbeing and Social Care told the Social Justice and Social Security Committee that the work of co-design is key to the development of the NCS and that the framework approach is necessary for this to work. He raised concerns that should co-design at policy level be undertaken before primary legislation, "that work could be wasted" if the reforms did not end up being legislated for by Parliament.

The Bill would provide for a National Care Service charter (s11). The intention is that the NCS Charter will “set out what people can expect from the NCS and provide a clear pathway to recourse should their rights in the Charter not be met.” (PM para 118). Iain Nisbet a lawyer that represents families and young people in disputes around additional support for learning said to the Committee—

“Having a charter helps people to understand easily what their rights are. It sets them out more readably than in the legislation, and that is a good thing. As a lawyer representing children and families, I always ask what we do with those rights. I would want to see an explanation of where people should go and who they should speak to if their charter rights are not being delivered. Will there be an easy system for resolving those disputes and for enforcing those rights and making them real?” ([OR 9 November 2022, col 49](#))

### *Views expressed to the Committee*

Claire Burns from Celcis told the Committee that staff working in the sector acknowledged the need for improvement and change to, among other things, deliver on the Promise. However she said—

“They are concerned about going into the unknown and the idea of unpicking everything. We do not have enough detail to say that the level of disruption will be worth it in terms of where we get to.” ([OR 9 November 2022, col 17](#))

Cameron-Wong McDermott from the office of the Children and Young People’s Commissioner Scotland said that he had concerns that “the process of proceeding by delegated legislation or regulations will not give the level of full legislative scrutiny that is required to take a human rights-based approach.” He suggested that the Bill could include more detail on how the NCS may interact with other aspects of policy. ([OR 9 November 2022, col 35](#))

Fraser McKinley from the Promise said that the Bill is “very frameworky”. ([OR 9 November 2022, col 37](#)). Iain Nisbet said it was “difficult to answer questions meaningfully with just a framework in mind”. (Col 36). Later Mr Nisbet observed—

“The obvious risk of the framework approach is that large and significant changes in structure and law have to be introduced by secondary legislation. Inevitably, that does not get the same degree of parliamentary scrutiny and potentially it is more open to legal challenge and so on. There are all the issues that go along with secondary legislation. In particular, because of the interconnected nature of children’s services, which fall under different pieces of legislation and dovetail with others, that is a particularly complex job to devolve to secondary legislation.

“Obviously, the advantage of that approach is the flexibility. It is easy to change things if change is needed at a later stage. It is an approach that Governments tend to like, but Parliaments less so. There is a balance to be struck—we cannot put everything through primary legislation, because there is not enough time—but, in this instance, I have concerns about the scale of the task that is being proposed to be done in regulations. However, maybe the drafters who are responsible for that will prove me wrong in due course.” (Cols 52 and 53)

The role of children’s services in an adult focused NCS was a concern for some. The other issue would be if the NCS was developed with a focus on adult services may lead to children’s services being ‘bolted on’. Fraser McKinlay said “there is no no-risk option here”. ([OR 9 November 2022, col 54](#))

The Committee also explored how and whether staff, pensions, and capital assets may be transferred.

## **Ministerial accountability**

The Policy Memo states—

“A core element of creating the NCS is that the Scottish Ministers will be ultimately accountable for social care support, as they are already accountable for health services. This is essential to achieve the aim of providing consistent, high quality support for everyone who needs it across Scotland, enabling integration, improvement and best practice to be shared on a national basis.” (para 128)

In evidence to the Social Justice and Social Security Committee, Mental Wellbeing and Social Care, Kevin Stewart, argued that it is a frustration that delivery of services are not in the currently hands of ministers (e.g. meeting of 17 November, 10.10am). This suggests a more directive approach by the Scottish Government is anticipated for the NCS than currently is in place.

Martin Crewe from Barnardo’s Scotland told the Committee last week that currently accountability for families gaining support from children’s services can be quite low. He also argued that accountability through the NHS is similarly low.

## **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 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.

Each Integrated Authority 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 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.

Regardless of whether children's services are 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 the [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.

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.

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. 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.

### *Varying local provision*

A key theme the Committee has heard is that the experience of children and young people and their families can be different from one area to another. This variation is one of the key policy issues the Bill is seeking to address. The Policy Memorandum stated—

“As well as variation in the governance structure and integration of services, decision-making responsibility sitting at local level means that services, resourcing and thresholds vary across local authority areas. This means that the services received by children and families differ depending on where the family lives. It also means that the roles, responsibilities, workloads and experiences of the workforce can differ depending on where they work.” (Para 149)

The design of the NCS is also intended to retain some local flexibility. Paragraph 12 of the Policy Memorandum stated—

“The NCS will aim to ensure everybody in Scotland can access a consistent social care support service, while noting the importance of local decision making and flexibility, and also that they can access early intervention and preventative support.”

In the informal session the Committee held with stakeholders, the Committee was told that here is a “postcode lottery” of receiving support. This is evident for example when a care experienced person is moving between local authorities.

The Committee took evidence from a variety of Health and Social Care Partnerships on 16 November. The journey of integration and the levels of partnership and related tensions through that journey were also varied. Developing effective governance arrangements were a challenge for some areas. Martin Crewe from Barnardo's Scotland and Jude Currie from the Scottish Association of Social Work said, in their view, the impact of integration on outcomes had been patchy.

### *Family-focused and Collaboration between services*

The aim of [integration of health and social care](#) was to ensure that a range of services are planned and delivered together. The intention is that “those who use health and social care services get the right care and support whatever their needs,



at the right time and in the right setting at any point in their care journey, with a focus on community-based and preventative care.”

Mike Burns from Social Work Scotland repeatedly highlighted the importance of the family as the focus of support. For example he said—

“Instead of simply seeing children and saying: “You’re child protection,” “You’re looked after” or “You’re kinship care.” We need to recognise that there is a need to wrap support around families in a different way.” ([OR 9 November 2022, col 31](#))

Health and social care are, of course, not the only services which support children and their families. Counsellor Tony Buchanan representing COSLA told the Committee—

“Every local authority works to get the best outcomes for the children in its area. As has been touched on, that means pulling together universal services. This is not just about social care and social work; it involves housing, education and working with the family and education. It is about bringing all those things together. The best way to do that is to do it locally, in communities, and through local authorities, because they are best placed to deliver those services and to meet the other challenges that can often impact on the outcomes that we are looking for.” ([OR 9 November 2022, col 4](#))

However, Claire Burns from CELCIS stated—

“Families tell us that there is still work to be done, even within the existing structure, to ensure that the functions and services exist. Even the co-location of education, health and social work will not necessarily produce an experience that families find really positive. There is still work to be done.” ([OR 9 November 2022, col 11](#))

A longstanding policy issue is the transition between child and adult services. Mike Burns acknowledged that more work was required to support children and young people who have complex needs. He also identified a “mismatch between the intensity of a care plan” for children and young people in children’s services and when they move to “an adult service in which there is a different perception of risk, need and demand.” ([OR 9 November 2022, col 24](#))

### *Implementation gap*

A number of witnesses described an “implementation gap” between policy and policy intentions and implementation. A number of contributors to the Committee’s formal and informal sessions highlighted resources as being a barrier to policy implementation.

Witnesses also noted that there are current pressures on staffing and coping with demand and rising costs.

## 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. 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.”

Section 27 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 about 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. Ministers would 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, 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 [Delegated Powers Memorandum](#) states—

“There are, in the Government's view, particular sensitivities about transferring children's services and justice services from local authorities to the National Care Service. As noted above, section 30 therefore provides that before making regulations under section 27 which would have that effect the Scottish Ministers must carry out a public consultation. It further requires them to put an account of that consultation before the Parliament at the same time as the draft Regulations that would give effect to the transfer. This is so that

the Parliament is aware of the consultation's outcomes, and any limitations it may have had, when making its own decision about whether to approve the draft Regulations. Where an additional requirement is added to the affirmative procedure in this way, it is sometimes colloquially referred to as a super-affirmative procedure." (para 41)

## 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.

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 intended 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](#)).

## 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.

Analysis from The Promise 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. Indeed, this is a position

shared by the Scottish Government, the Cabinet Secretary for Health and Social Care's letter to the Committee in August said, "no decision has been taken on whether children's services will be included in the NCS".

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.

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.

## **Issues raised by witnesses about the inclusion of Children's Services**

### *The role of structural change*

Jackie Irvine from the Care Inspectorate stated that its evidence was that there is variation in the quality of local services. However, the level of integration of local services was not a determining factor. The important factors she identified were "leadership, how people use data and how people engage with children, young people and families in order to design services that meet their needs." ([OR 9 November 2022](#), col 2) Ross McGuffie from North Lanarkshire Social Care Partnership said that "leadership, culture and ethos" are "what really makes a difference". Martin Crewe from Barnardo's Scotland highlighted four things that lead to success in the current system:

- a genuine determination to make things better and deliver change where it is needed;

- embracing the whole-system complexity;
- putting children and young people at the centre of all our considerations; and
- building mutual trust and respect

Claire Burns from CELCIS told the Committee—

“One of the things that concerns us—it certainly concerns the sector—is that there seems to be an underlying assumption that structural change, in and of itself, will bring about those changes, and I think that it will not.” [OR 9 November 2022](#), col 2)

And later Ms Burns said—

“We need to be able to invest in children’s services, but, if there is no further investment, any change in structure will just be more disruptive” ([OR 9 November 2022](#), col 17)

Mike Burns from Social Work Scotland suggested that culture change takes “five, 10 or 15 years”. Ross McGuffie from North Lanarkshire HSCP agreed, he told the Committee last week that “transformative change takes time” and “sometimes we can end up reaching the next restructure before the current one has had the chance to get to where it needs to be”. Vicky Irons from Dundee HSCP argued both that the process of organisational change can distract from a focus on outcomes and currently dealing with two employing authorities (ie the Health Board and the LA) with “two very different cultures can get in the way.” Ms Irons later elaborated on the second point, and highlighted challenges of negotiating budgets with two organisations – these challenges, she argued, would need to be overcome in any new system.

A number of witnesses highlighted workforce issues. For example, Cllr Buchanan from COSLA said—

“Workforce planning is a significant issue and trying to recruit people into the various services that require that support is critical. I suppose that there is an argument that, if we are looking at the costs of setting up a national care service, that money could perhaps be spent on services on the ground and in the front line, and we would be in a better position than we are in now.” ([OR 9 November 2022](#), col 25)

As noted above the NCS will create structural changes whether children’ services are included or not. Jackie Irvine pointed out—

“Either those services will go into the national care service or they will be outside it. However, both alternatives will mean a change for most local authorities. If an authority is currently integrated—as in Glasgow...—pulling children’s services out of that and keeping them with the local authority will cause disruption. Where children’s services are not integrated in the local authority and they are taken into the national care service, that will also cause

disruption. There will be change no matter what.” ([OR 9 November 2022](#), col 12)

Nicky Connor from Fife Council said that the “more we can integrate things the better, and the more joined up things are for children and families, the better”. Vicky Irons from Dundee HSCP suggested that a more joined up approach would support more preventative work.

The Committee was told by the second panel on 9 November that a national service is not necessary to realise children and young people’s rights. Iain Nisbet from Cairn Legal and My Rights, My Say told the Committee—

“I do not think that the structure and whether the service is delivered nationally or locally actually impacts on whether you can make it human rights compliant. ... In relation to making those rights real for people, you want a system in which disputes can be resolved, complaints can be addressed and people feel that there is accountability and involvement.” ([OR 9 November 2022](#), col 12)

### *Moving the interfaces*

One of the arguments for including children’s services in the NCS would be that the interface between children’s services and adult services could be smoother, particularly through the transitions between those services.

Currently, local authorities (or the IJB) has responsibility for children’s services, along with ELC, school education, housing and so on. Fiona Duncan from Highland Council expressed concern to the Committee last week that the close links between, particularly education and children’s services could be at risk if children’s services were incorporated into the NCS. Martin Crewe from Barnardo’s Scotland gave examples of where key interfaces may occur for different sets of children. He said—

“First, for most children, the key interface is education. For children who have been abused, the key interfaces involve the police and the children’s reporter system. For care leavers, the key interfaces involve housing, colleges and employment support. For large numbers of the children, families and young people we work with, I cannot particularly see that the national care service would have a big positive impact.”

Others in that meeting noted that organisational boundaries will always be present and it is the task of those organisations to collaborate with a range of partners. Vicky Irons from Dundee HSCP argued that the reform does not go far enough, and she would prefer fully integrated health and social care authorities.

## **Research**

Stakeholders 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, Social Care and Sport Committee’s call for views.



CELCIS has been tasked 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?"

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.

Research is expected to conclude around Autumn 2023 with a report published thereafter.

## Co-design of future services

The Policy Memorandum states--

"The Scottish Government is committed to engaging with people with experience to co-design the detail of the new system, to finalise new structures and approaches to minimise the historic gap between legislative intent and delivery. For that reason the Bill creates a framework for the National Care Service, but leaves space for more decisions to be made at later stages through codesign with those who have lived experience of the social care system, and flexibility for the service to develop and evolve over time. Some of those future decisions will be implemented through secondary legislation, others will be for policy and practice." (para 7)

This is reflected in the drafting of the statutory consultation for the National Care Service charter (s12) which provides that Ministers should have "particular regard" to the views of service users and staff.

However, the provisions around transferring Children's services into the NCS would only require ministers to consult publicly and provide Parliament a summary of the "process by which they consulted". (s30)

Ensuring that children and young people's voices are heard and understood, particularly children and young people with complex needs or experience of trauma, is not a straightforward task. A meaningful process which includes the views of children will require more than a traditional Government consultation (see for example Children in Scotland's [Meaningful Participation and Engagement of Children and Young People](#).) Cameron-Wong McDermott from the CYPSC office described co-design as, "the most intense form of participation when it comes to

children and young people [involving] participation at a very early stage, even before a consultation takes place.” ([OR 9 November 2022](#), col 42)

An example of an extensive project which sought the views of young people directly is the Independent Care Review. Fraser McKinlay from the Promise explained the approach of the Review; he said—

“It is not a case of asking a group of children and young people, “Do you think children’s services should be in or out of the care service?” The process is about finding out what matters to them.

“That is what the independent care review did. I was not part of that, but I now have the lead role in implementing it. It said, “What is important to you?” It is then our job to figure out what that means in terms of structures, governance, accountability and all that other stuff.” ([OR 9 November 2022](#), col 43)

The Government’s CWRIA stated—

“In order to ensure that the people who access and deliver social care support can engage effectively in the co-design process, the Scottish Government will establish a NCS Design School. It will offer training and support to the organisations and the people who access and deliver social care support to overcome barriers to participation and support them to work in partnership with design services. The NCS Design School draws inspiration from the design school model developed and delivered by The Promise Scotland in partnership with the Scottish Government Office of the Chief Designer. The design school is scheduled to be launched in summer 2022. Due to this link with The Promise design school model, the NCS Design School should have features built into its design that makes it accessible to children and easy for children and young people to participate in.”

Jude Currie from the Scottish Association of Social Work explained that she was unsure where the resources and leadership supporting social would sit within the NCS framework. She argued that the function of social work needs to be understood through the process of developing the NCS, regardless of whether social work forms part of the NCS.

Policy making approaches which include co-design, co-production were the topic of a [recent SPICe blog](#).

## 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.

**Ned Sharratt, Senior Researcher, Education, Culture, SPICe Research**

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