



mental welfare
commission for scotland

National Care Service (Scotland) Bill (Detailed) consultation response

Corporate document

November 2022



Response ID ANON-Z1FZ-UJE1-Z

Submitted to National Care Service (Scotland) Bill (Detailed)

Submitted on 2022-09-02 16:52:08

About you

Please read the privacy notice below and tick the box below to show that you understand how the data you provide will be used as set out in the policy.

I have read and understood how the personal data I provide will be used.

How your response will be published

I would like my response to be published in its entirety

What is your name?

Name:

Suzanne McGuinness

What is your email address?

Are you responding as an individual or on behalf of an organisation?

Organisation

Organisation :

Mental Welfare Commission for Scotland

Please tell us a little more about your connection to care services. Which of the following options best describes you. (Tick all that apply) Other

(please specify in the box below)

If you selected 'Other' please provide more information in the box provided.:

Would you like to be involved in future engagement work?

Yes, I would like to be involved in future engagement work and agreed to be contacted by the Committee in the future.

Organisation details

What is your job role?

Please provide answer in box provided:

Executive Director (Social Work)

Information about your organisation

Please add information about your organisation in the box below:

Our mission is to be a leading and independent voice in promoting a society where people with mental illness, learning disabilities, dementia and related conditions are treated fairly, have their rights respected, and have appropriate support to live the life of their choice.

We carry out our statutory duties by focussing on five main areas of work. They are visiting people, monitoring the Acts, investigations, information and advice, and influencing and challenging.

General questions about the Bill

The Policy Memorandum accompanying the Bill describes its purpose as being “to improve the quality and consistency of social work and social care services in Scotland”. Will the Bill, as introduced, be successful in achieving this purpose? If not, why not?

Please provide your response in the box provided.:

General

The Commission welcomes all measures aimed “to improve the quality and consistency of social work and social care services in Scotland”, which leads to

supporting people to meet their personal outcomes, ensures rights are respected and to live their lives as independently as possible. Through the independent review it is clear that there is a Scotland wide appetite and an urgent need for change in terms of improvement across the social work and social care landscape.

Standards

Through the Commission consultation process there remains conflicting views as to whether the National Care Service (NCS) as presented in the Bill and associated documents is achievable, based on the information provided to date. However, there is consensus in relation to the intentions behind the Bill and development of the NCS. There is potential for the NCS to provide a means to reduce unwarranted variation in services, create national standards that ought to be delivered, and set out expectations clearly for consistent service delivery. However, has there been consideration of ensuring any standards devised will take into account the raft of standards already in existence?

Wider legislative landscape

Social Work and Social Care are subject to multiple legislative provisions across a complex landscape. The legislative list provided for transfer outlined in Schedule 3 of the Bill does not fully capture the enormity of the wider legislative landscape which impacts on social work and social care services. How then will this Bill, as presented, ensure consolidation of wider legal provision for social work and social care across the expansive landscape? Without this consideration, the Bill, as presented, risks facing legislative barriers and may not succeed as intended.

Existing good practice

There are additional questions to be addressed in relation to a potential failure to recognise and build upon those IJB's which demonstrate good practice and the associated risks of reversing areas of good practice – both strategically and operationally. There are concerns in relation to managing the current crisis in staffing and financial resources across health, social work and social care, with the NCS being presented as a panacea for current significant challenges across the social work and social care landscape. Further detail would be helpful to reflect what will be practically different about the NCS compared to current integration and service delivery arrangements in terms of increasing staffing numbers and financial resources.

NCS Structure

The Commission respondents highlight reservations around the NCS structure and question whether it will be too large and unwieldy to deliver on the policy intentions in practice. Has there been cognisance of the culture shift required by health and local authority staff and the length of time it will take for practice on the ground to adapt and change? The current integration arrangements have never been evaluated; this appears to be a missed opportunity in the consideration of the reshaping of social work and social care services. How will the NCS monitor its consistency to avoid any national variances? Is there consideration of urban versus rural versus islands' needs and outcomes? In the Commission's experience, there are significant variances across these areas.

Difference

In shifting governance arrangements from IJB to care boards and special care boards with ministerial oversight, what practical difference can this make in terms of staffing and increased investment? There is a sense that the NCS may mirror NHS arrangements, which we know through our work that service delivery and governance arrangements across Scotland are not consistent across health board areas.

Shared Electronic Records

A shared electronic record is welcomed and is a long overdue improvement at national and local level, which could reduce the need for individuals to repeatedly have to speak to their circumstance with multiple professionals. However, further consideration is required in respect of privacy, cross border information sharing and existing multiple manual/electronic systems in operation across the health and social work, social care landscape. The shared electronic record also provides a prime opportunity for consistent data collection to inform and improve gaps in services, and equalities information to inform and improve service delivery for minority populations. There is insufficient detail to offer further detailed comment beyond agreement with the principle of shared and accessible information across health, social work and social care services.

It is understood that the Bill is the first stage and is proposed to implement the NCS framework and pathway for future secondary legislation, however it is difficult to comment on matters without additional information to inform our views further.

Is the Bill the best way to improve the quality and consistency of social work and social care services? If not, what alternative approach should be taken?

Please provide your response in the box provided.:

The Bill highlights some areas identified through the independent review, such as ethical commissioning and carers support, which are welcomed. However, the NCS as it is being presented since the independent review, has extended its coverage significantly, with current uncertainty around which services are included from the outset. The law alone is unlikely to realise positive change for individuals as set out in the Bill as presented and in associated documents. It is suggested that in the absence of an evaluation of current integration arrangements, the Bill as amended, with further detail and clarity, has the potential to inform and improve the quality and consistency of social work and social care services. However it is difficult to fully comment on the efficacy of the Bill as it stands without further detail, which we hope, when available, will offer the opportunity for further consultation and comment.

Pilot approach

Is there consideration of a pilot system on components of the NCS? This may offer a practical application of the intentions of the NCS, which provides a subsequent opportunity for review and a 'phase in' of the NCS through an informed and evidence based approach. As highlighted above, there has been no whole system review of current integration arrangements, therefore taking a measured approach may provide a robust foundation upon which to build the NCS nationally and meet the agreed intention of ultimately improving outcomes for people across Scotland.

Anne's law is welcomed in the current Bill.

Are there any specific aspects of the Bill which you disagree with or that you would like to see amended?

Please provide your response in the box provided.:

Section 1 principles

The principles set in section 1 read as broad 'policy intention' over legal principles and would be impossible to measure. The principles section could benefit from being honed, with explicit reference to existing human rights and equalities legislation, in addition to UNCRPD/UNCRC instruments, as applicable.

Ministerial Powers

The powers of Scottish Ministers to apply the section 1 principles as described in section 2(2) "as they see fit" seems to be set down without parameters. This suggests significant discretion and would require mitigation of any perceived conflicts?

Conflict

The Scottish Ministers powers and responsibilities, as set down in the Bill, appear to be both charged with service delivery and monitoring the NCS functions, which could lead to perceived or actual potential conflict of interest without independent monitoring/scrutiny bodies indicated. A reference to Parliamentary scrutiny should mitigate this in respect of ministerial oversight and accountability.

Care Board Representation

Section 4 would benefit from specifying, as far as possible, the requisite representation and voting arrangements on Care Boards, which must include individuals with lived and living experience, carers and family members. Without this, there is a risk of replicating current IJB arrangements, without meeting the intended governance arrangements and co-design approach of the NCS.

Independent Advocacy

Section 13 in relation to independent advocacy is welcomed. This section could benefit from clarifying what is meant by 'independent advocacy', using the definition set down by SIAA may be helpful. It is also suggested that a duty is conferred, through primary legislation onto the NCS in relation to access to independent advocacy provision should apply equally to both local care boards and special care boards.

Improvement Bodies

An improved and joined up approach to oversight and monitoring by improvement bodies is welcomed. The additional powers conferred to the Care Inspectorate, for example, is welcomed to ensure individuals at risk in under-performing services are afforded a speedy resolution where services are unable to deliver to appropriate standards. However, section 42 requires further detail in relation to pre closure notice steps, otherwise the powers conferred through this section do not allow for improvement protocols in the first instance and could be open to legal challenge. It is understood that s.62 of the Public Services Reform Act provides a notice period for improvement before the Care Inspectorate can formally propose to cancel the registration. It is suggested that a failure to comply with an improvement notice results in s.42 or greater detail as to when and how the power can be applied could be considered.

In relation to section 43(2), our understanding is that Health Improvement Scotland are afforded the legislative power to charge a fee to support potential joint inspections with the Care Inspectorate. The Bill is silent in relation to other inspection and scrutiny bodies charging a fee to support public sector scrutiny and inspection functions. Without further details, we would fundamentally disagree with public bodies charging a fee to support public statutory functions.

Children and Justice Services

The "other" section refers to the definition of "a children's service" in section 30(4), and "a justice service" in section 30(5). Any service provided according to the Mental Health (Care and Treatment) (Scotland) Act 2003 appears to be excluded from the definition of a justice service. It is not excluded from the definition of "a children's service". There doesn't seem to be exclusion of services provided according to the Adults with Incapacity (Scotland) Act 2000. If this is correct, the explanation for doing so is not clear.

Scottish Mental Health Law Review

The current Scottish Mental Health Law Review outcomes are as yet unpublished. However, further information is required in relation to the interface between the NCS Bill and future changes to the mental health and capacity legislative landscape. Without further information it is difficult to comment further.

Eligibility Criteria

Whilst the principles in the Bill make reference to a focus on early intervention/avoidance of delay/prevention, the Bill is an opportunity at this stage, to address the current eligibility criteria through legislation. A revision of eligibility criteria, its application and additional investment for local areas to invest in early intervention and prevention should not be delayed through the implementation of the NCS.

National Social Work Agency

The Bill does not of itself mention the set up the National Social Work Agency (NSWA). The role of the Office of the Chief Social Work Adviser is absent in relation to purpose, function and role in relation to the NSWA. The implementation of the NSWA is welcome and long overdue for the social work workforce, which will offer consistent learning and development, improvement and CPD. The Social Work profession requires to be nationally recognised on par with partnership professions, with national workforce planning, which would be best reflected through NCS primary legislation. The Bill would benefit from specific provision in relation to the NSWA and additional details in relation to set up, function and governance arrangements.

Chief Social Work Officer

The Bill is silent as to the Chief Social Work Officer (CSWO) role, which is pivotal in the social work and social care landscape, especially Adults with Incapacity legislation as local authority Guardians. The CSWO role and how this will be workable with the transfer of local authority duties under NCS is

unclear. It is suggested that the CSWO and their role within NCS is made explicit within NCS arrangements and within the Bill.

Membership of Care Boards

There is a lack of clarity in relation to the Care Boards and its representative members in the Bill. The shift from local authority responsibility to NCS through the local care boards and national special care boards is outlined. However, is there consideration of ensuring the representation of care boards and special boards is appropriate to ensure decision making and improvements are delivered without cumbersome processes?

Co-design

Given the intentions of the independent review, it would be hoped that local services are genuinely co-designed with all stakeholders, which the Bill and associated documents highlight. The Commission welcomes genuine involvement of individuals, families and carers at local and national level to inform the ways in which services delivered meet local needs and outcomes. The co-design element at all levels should be made explicit in the Bill, and particularly within the primary legislation to ensure individual, families and carer involvement remains at the core of developing services, devising draft strategic care board plans (at inception) and future governance arrangements.

Is there anything additional you would like to see included in the Bill and is anything missing?

Please provide your response in the box provided.:

Relevant details in relation to mental health legislation, adults with incapacity legislation and indeed adult support and protection legislation in the context of intentions and service transfer are missing from the Bill.

Mention is made of rights however explicit reference to human rights, UNCRP/UNCRC and equalities legislation is missing.

Definition of what is meant by children and justice services requires to be further considered for clarity.

Reference to how the Bill will fit with future legal reform, with particular reference to the Scottish Mental Health Law Review should be considered.

The Bill supports collaboration of individuals but does not go as far as to cement co-design into the Bill, particularly with reference to Care Board strategic draft planning

Future secondary legislation

Please provide your response in the box provided:

There is a lack of clarity and detail in relation to the implications of the transfer of roles, responsibilities and delivery according to the Mental Health (Care and Treatment) (Scotland) Act 2003 under the NCS umbrella. Further detail is required with reference to mental health services for people with significant mental ill health in terms of what services will be transferred and would welcome discussion on this point.

There is a lack of clarity around the local authority connection to the NCS post transfer and their associated local care boards. There are multiple functions provided by local authorities, such as HR and legal services for example, how does the NCS intend to ensure the Care Board infrastructure is robust? Without further detail, it is difficult to envisage how Care Boards will be able to function any better than the IJBs do now.

Further clarity is required in respect of the transfer of local authority employees into the NCS and implications for pension rights for example. This is further complicated with the transfer of health functions in to NCS without transfer of NHS staff terms and conditions. Therefore, as the Bill is presented currently, there will remain a separation of employment terms and conditions between NHS and 'NCS' staff, which is no different to current arrangements.

Transfer of services to the National Care Service

Please provide your response in the box provided:

Children and Justice Services

The inclusion of criminal justice social work and children's social work and social care services should be considered as part of the NCS from the outset, otherwise the current disparity of access to services will remain. The Bill proposes a further consultation, which although welcomed, which is suggested should take place prior to the NCS enactment to maximise full inclusion of all services.

The National Care Service principles sets out that the NCS is an investment in society, essential to the realisation of human rights and to enable people to thrive and fulfil potential. This should apply to all ages under the NCS. This must apply to all of Scotland's populations from the outset of the NCS.

Mental Health Services

It is noted that section 30(5) any service provided in exercise of a function conferred under the Mental Health (Care and Treatment) (Scotland) Act 2003 is excluded from the definition of a justice service. The same approach does not appear to apply to the definition of "a children's service" in this Bill, which indicates a variance between adults and children. In addition, the Adults with Incapacity (Scotland) Act 2000 is also not excluded in the same way. Further details on how the mental health act and the adults with incapacity acts are to be addressed under the NCS proposals would be welcomed. In addition, further clarity in relation to the transfer of mental health services would be welcomed, particularly in relation to individuals with complex and enduring mental ill health.

Do you have any general comments on financial implications of the Bill and the proposed creation of a National Care Service for the long-term funding of social care, social work and community healthcare?

Please provide your response in the box provided.:

In order to respond, further details are required. Without details, it is not clear how a National Care Service will interact with existing organisations, or what safeguards will be in place to ensure that current difficulties in social care and social work are not simply replicated on a national level.

Impact assessments

Please provide your response in the box provided.:

National Care Service principles (Section 1)

Please provide your comments on the National Care Service principles in the box provided.

Use text box provided:

The Commission has outlined above specific provisions throughout this response.

Section 1 principles would benefit from revision in terms of their scope as the current iteration is too broad as to be meaningful or measured;

Accountability to Scottish Ministers (Sections 2 and 3)

Please provide your comments on Scottish Ministers' overarching responsibilities for the National Care Service in the box provided.

Text box provided below:

Section 2 and section 3 imply that Scottish Ministers are both responsible for delivery and scrutiny of the National Care Service, which may be construed as a conflict of interest. S.3 also confers a broad power 'that seems to them' without reference to parliamentary scrutiny, which is suggested to be inserted here to ensure appropriate checks and balances are in place.

Section 2(2) relating to the breadth of Ministerial powers should be reviewed, with parliamentary scrutiny provision added to ensure appropriate checks and balances are in place and to ensure the intended outcomes are met consistently.

National Care Service Charter (Sections 11 and 12)

Please provide your comments on these sections of the Bill in the box provided.

Text box:

The purpose, measure and monitoring of the effectiveness of the Charter requires to be detailed, in addition to ensuring that the statutory co-design process of the Charter includes individuals, carers and families from the outset.

Independent advocacy (Section 13)

Please provide your comments on this section of the Bill in the box provided.

text box below:

Please refer to general comments section.

Ministers' powers to intervene (Chapter 4)

Please provide your comments on these sections of the Bill in the box provided.

text box:

Please refer to General response in relation to Minister's powers.

It is understood that the Bill is the first stage and is proposed to implement the NCS framework and pathway for future secondary legislation, however it is difficult to comment on matters further without additional information to inform and expand our current our view.

Transfer of functions, including scope of services (Chapter 6 and Schedule 3)

Please provide your comments on these sections of the Bill in the box provided.

text box:

It is understood that the Bill is the first stage and is proposed to implement the NCS framework and pathway for future secondary legislation, however it is difficult to comment on matters relating to transfer of function and scope of services without additional information to inform our views further.

Inclusion of children's services and justice services (Section 30)

Please provide your comments on this section of the Bill in the box provided.

text box:

Please refer to our General response.

Health and social care information (Part 2)

Please provide your comments on this section of the Bill in the box provided.

text box:

Please see General response.

Right to breaks for carers (Sections 38 and 39)

Please provide your comments on these sections of the Bill in the box provided.

text box:

Please refer to General Response. The Commission supports the rights of carers.

Implementation of Anne's Law (Section 40)

Please provide your comments on these sections of the Bill in the box provided.

text box:

The implementation of Anne's law through this Bill is fully supported.

Regulation of social services (Sections 42 and 43)

Please provide comments on these sections of the Bill in the box provided.

text box:

Comments provided in General section.

Final provisions (Part 4)

Please provide comments on this part of the Bill in the box provided.

text box: