



The National Care Service (Scotland) Bill

Brief Guide

Key Points about the Bill

1. The Bill does not set up a system like the NHS to directly deliver services
2. The Bill fails to remove profit from care
3. The Bill takes powers and responsibilities away from local government and the NHS and gives them to quangoes.
4. The Bill creates a system of care boards whose members are accountable to Ministers not service users
5. The Bill aims at reducing direct public provision of public services & promotes outsourcing.
6. The Bill not only retains but expands the failed market approach to care for vulnerable individuals
7. The Bill does not address the problem of unmet need
8. The key interventions for driving up service quality and standards (sectoral collective bargaining in social care, a National Social Work Agency, better resourcing) are not part of the Bill.
9. The Bill puts the future of up to 75,000 council workers and an unknown number of NHS workers into question
10. The lack of detail and reliance on post legislative regulations prevents proper scrutiny of the Bill.

This is a short guide to the main provisions of the [National Care Service \(Scotland\) Bill](#) and the concerns that it raises. The Bill does not set up a service along the lines of the NHS. The National Care Service will not be providing care directly – it will commission and procure care from third parties. As well as adult social care the plan is that all of children’s and social work services are removed from councils and delivered via this commissioning and procurement model. For profit care will remain central to the delivery of adult care. No private care facilities will be taken into public ownership as part of the new service. The only transfer of ownership planned for is the transfer of services and facilities from the public sector (Councils and NHS) to the third sector to deliver services on contractual basis. UNISON’s view is supportive of the idea of a national care Service – but this Bill and the scheme it sets up will not tackle the crisis in care. It is not fit for purpose and should be withdrawn.

Delivering Care

Unlike the NHS the NCS will not be directly delivering services. Instead the NCS will commission and procure services from the private, public or third

sector.¹ The Bill will require Scottish Government Ministers to establish new quangoes - Care Boards². The Care Boards will in turn commission and procure services from private, public and third sector providers.³

The Care Boards will formulate strategic plans for their area.⁴ These must be approved by Scottish Government Ministers who can amend them as they see fit.⁵ The proposals must accord with “ethical commissioning” which is defined in the Bill as being in line with “National Care Service Principles”. These include “fair work” and “financial stability”⁶.

The new system is aimed at ensuring “the market for social care as a whole remains vibrant and stable which will ensure continuity of quality social care provision.”⁷

The Bill does not specify how many local care boards there will be, only that Ministers must ensure that all of Scotland is covered by a care board⁸ (So there could be two or fifty two). Scottish Government will make those decisions after the Bill is passed.⁹

How many people will sit on each care board and for how long will also be decided by Scottish Government ministers after the Bill has passed. Ministers will also pick the members and can remove them.¹⁰

Transfer of responsibility.

Once passed the legal responsibility for the provision of adult social care services will be removed from Local Government and passed to the NCS. It is the Scottish Government’s intention that the rest of social work is taken out of local government’s remit.¹¹ This, can happen at any point following the passage of the Bill, subject only to a non binding consultation having taken place.¹²

Ministers can transfer responsibility for any service they choose from either local authorities or the NHS to the NCS if they feel that it “seems to them to best reflect the National Care Service principles.”¹³ The Bill lists 22 pieces of legislation which confer powers on local authorities which will be transferred if this Bill is passed. These range from the 1948 National Assistance Act to the management of Offenders (Scotland) Act 2019.¹⁴

¹ NCS Bill Financial memorandum Para 26

² NCS Bill Ch2 Section 4

³ NCS Bill Financial memorandum Para 26

⁴ NCS Bill Ch2 section 7

⁵ NCS Bill Ch2 Section 8

⁶ NCS Bill Ch1 Section1

⁷ NCS Bill Financial memorandum para 17

⁸ NCS Bill Ch 1 Section 4(2)

⁹ NCS Bill Ch1 Section 4 (1)

¹⁰ NCS Bill Ch 2 Section 4 (2), Schedule 1, Part 5 sections 11 & 12 .

¹¹ [file:///C:/Users/Lowst/OneDrive%20-%20UNISON/Documents/national-care-service-scotland-consultation%20\(1\).pdf](file:///C:/Users/Lowst/OneDrive%20-%20UNISON/Documents/national-care-service-scotland-consultation%20(1).pdf) p56 & 65

¹² NCS Bill Ch6 Section 30

¹³ NCS Bill Ch6 Section 27

¹⁴ NCS Bill Schedule 3

The extent of the removal of powers from councils is such that a special provision has had to be made in order to allow councils to enter into contracts to provide services for which they are no longer responsible¹⁵

The Bill also allows any function carried out under National Health Service (Scotland) Act 1978 to be designated as a National Care Service function and transferred from a Health Board or Special Health Board to being the responsibility of a Care Board.¹⁶

Once responsibility for a service has been transferred from a local authority or the NHS to the NCS then it is up to the care board to decide who they can commission and procure services from. When putting services out to tender Care Boards can exclude Councils or the NHS from being allowed to bid to provide the services and instead reserve them for third sector providers.

Transfer of assets

Once a function has been deemed an NCS responsibility the Bill allows ministers to transfer properties from Local Government or the NHS to “the new function holder” ie whoever is running a service on behalf of the Care Board¹⁷.

Transfer of Staff

If a service has been deemed to be an NCS function then Ministers can transfer staff providing the service from Councils employment to the “new function holder”. Ministers cannot transfer NHS staff out of NHS employ. (The Bill says nothing about what Health Boards may do with staff employed to deliver a service may do once a service and the property associated with it have been transferred out of the NHS.)

The financial memorandum accompanying the Bill says that under the new care regime transfer out of Local Government “could involve up to 75,000 employees across social work and social care”¹⁸ TUPE regulations will apply where staff are transferred¹⁹, but TUPE regulations do not cover pensions. There is no mention of what the continuing pension rights of these staff will be after transfer.

Procurement

The Bill allows Care Boards to specify that particular contracts can be reserved for what are described as “qualifying organisations”. An organisation can be listed as “qualifying” if it has one of the structures listed in the bill – these are mostly about being employee owned or not for profit. The Scottish Government has confirmed though that neither Local Authorities nor Health Boards can be included.

¹⁵ NCS Bill Schedule 4 section 2

¹⁶ NCS Bill Ch 6 Section 28

¹⁷ NCS Bill Ch6 Section 32

¹⁸ NCS Bill Financial memorandum Para 53

¹⁹ NCS Bill Ch6 Section 31 (4)

Lack of detail

The Bill is so lacking in detail that it is difficult to evaluate many of its provisions. From the number of care boards to the pension rights of transferred staff. From what services might be transferred from the NHS to what an independent advocacy service, or the national complaints service would look like – none of these details are available. Nor can there be significant parliamentary scrutiny of proposals once details become available – they will be presented as secondary legislation which cannot be amended.

UNISON Scotland View

The Bill doesn't take profit out of the care system – it takes services out of councils and the NHS. This is an attack on publicly owned and delivered services, not the National Care Service we need. The Scottish Government should withdraw the Bill, devise a care system that has broad support from service users and the staff who are crucial to service delivery – and then legislate.

The transfer of functions from councils to unelected quangos spells the end of publicly run and delivered democratically accountable social services for local communities. This is a massive exercise in centralisation and removal of local accountability. The Scottish Government are treating local authorities in exactly the manner they complain that they are treated by the UK government.

The bill leaves the market in adult social care intact. But more than this, the provisions in the bill which remove statutory duties and responsibilities from councils actively enable the expansion of the market to new areas.

For example, the bill makes it possible to end direct public provision of social care as a public service to communities. There will be no 'in-house' social care provision, and no possibility of 'in-sourcing'. The bill as presented allows for increased privatisation of social care and social work services despite the evidence that public service delivery and non-profit delivery of care results in higher care standards. Instead of learning the lessons from the outsourcing of adult social care to the third and private sectors, the government appears, through this bill, to be ready to repeat the same mistakes across a wider field of service provision.

The scale of outsourcing proposed puts other public sector jobs at risk. The changes will take one third of budgets away from councils. This will have knock on effects for employment in areas such as IT, finance, buildings and maintenance, and many others besides.