

About Dementia

Briefing on the National Care Service (Scotland) Bill

Introduction

This briefing is for members of About Dementia, both people living with dementia and unpaid carers of people living with dementia, who want to know more about the proposals in the new National Care Service (Scotland) Bill, introduced to the Scottish Parliament on 20th June 2022. It may also be of interest to partner organisations and other organisations working within dementia.

We are always keen to hear from our members. If you have any comments or questions about this briefing, please contact us at AboutDementia@agescotland.org.uk To read the full bill and supporting documents, click [here](#).

Background

Social care is care provided within a community setting. This could be in someone's home, or in a care home. Social care enables people to live independently and do the things that are important to them. Typically, this involves assistance with personal care tasks such as washing, dressing, shaving etc. Alongside help around the home such as cleaning, cooking or help with getting about. The Covid 19 pandemic, and the resulting lockdown that started in March 2020, has brought with it a new focus on the role of social care and where it sits within social policy in Scotland.

In September 2020 the Scottish Government announced an Independent Review of Adult Social Care in Scotland (IRASC), which was chaired by former civil servant Derek Feeley. The review took on board evidence from engagement sessions and formal responses from organisations across the health, social care, and voluntary sectors. You can read About Dementia's submission, which was informed by our members [here](#). The [Feeley Review](#) was published in February 2021 and recommended a human-rights-based approach to Social Care, as well as the creation of a National Care Service.

In August 2021 the Scottish Government, in response to Feeley's recommendations, published a consultation on the creation of a National Care Service, to be on a par with the National Health Service (NHS). Throughout our briefing, we'll abbreviate the National Care Service to NCS, for ease of length. To seek our member's views on the proposals, we held three engagement sessions and shared a survey. You can read our submission [here](#).

The views expressed throughout the consultation have been used to form the basis of the Bill that was submitted to the Scottish Parliament in June 2022.

What does the Bill say?

The Bill outlines the new legislation needed to make the proposals to create a National Care Service a reality. Not all of the changes that have been proposed will need legislation to make them happen. The Scottish Government have stated that many of the powers to make the National Care Service happen already exist. Where this is the case, the Bill proposes what is known as 'secondary legislation.'

Secondary legislation is guidance and regulation that makes clear what should happen to enable the proposals to take place.

Vision for the National Care Service

The policy narrative accompanying The Bill sets out the following vision:

“The Scottish Government’s vision for the National Care Service is that it will:

- *enable people of all ages to access timely, consistent, equitable and fair, high-quality health and social care support across Scotland*
- *provide services that are co-designed with people who access and deliver care and support, respecting, protecting and fulfilling their human rights*
- *provide support for unpaid carers, recognising the value of what they do and supporting them to look after their health and wellbeing so they can continue to care, if they so wish, and have a life beyond caring*
- *support and value the workforce*
- *ensure that health, social work, and social care support are integrated with other services, prioritising dignity and respect, and taking account of individual circumstances to improve outcomes for individuals and communities*
- *ensure there is an emphasis on continuous improvement at the centre of everything*
- *provide opportunities for training and development, including the creation of a National Social Work Agency providing national leadership, oversight and support*
- *recognise the value of the investment in social care support, contribute to the wellbeing economy, make the best use of public funds, and remove unnecessary duplication.”*

(National Care Service Bill, Policy Memorandum, pp3-4)

Creation of new care boards

What the NCS consultation said:

- The consultation on the NCS last year proposed the creation of Community Health and Social Care Boards. The boards would be responsible for delivering social care at a local level. Rather than being accountable to local authorities, they would become accountable to Scottish Ministers. It was proposed that membership of the boards would include people with lived experience, with the potential for them to be full voting members. Currently Integrated Joint Boards have members with lived experience, but they are not able to vote on decisions.

What the Bill proposes:

- Ministers will have new powers to decide on strategy and delivery of social care. This will take this responsibility away from local authorities who are currently required to do this, with accountability lying with the Scottish Government instead.
- Delivery of social care will be ensured through the creation of care boards who will be responsible for the delivery of social care at a local or national level. There will be two types of care board: Local Care Boards; or Special Care Boards.
- Local Care Boards will take over from the existing Integrated Joint Boards (IJBs) that currently deliver social care. Currently, IJBs are made up of representatives of local authorities and the local health board. They also have non-voting members from the local third sector, as well as people with lived experience.
- Special Care Boards will be used where economies of scale make it more sensible to buy treatments or services at a national level. This could apply to certain treatments that would be more expensive to buy several times at a local level, enabling them to be paid for once at a national level and then sent where they are needed.
- There are not currently any details on who the members of care boards will be. Again, this will be decided through secondary legislation.
- It is also not stated in the bill what area the local care boards will cover, though it is likely that this will match up with local authority areas.

Advocacy

- Both the NCS consultation and the Feeley Review highlighted a role for independent advocacy.
- About Dementia's submission supported this and called for specialist advocacy to be made available to people living with dementia.
- The Bill makes provision for advocacy to be made available. Although no details were given on dementia specific advocacy. Further details around advocacy will come through secondary legislation.

Complaints

- The consultation highlighted the need for an improved complaints procedure and a single point of contact for any complaints related to social care.
- The Bill establishes a complaint service and gives powers to ministers to either deliver this service or decide to appoint an external agency to fulfil this role.

Powers to intervene

- The Bill would grant powers to Scottish Ministers to intervene in the work of a care board. The care boards must comply with directions issued by the Minister. In addition, the Minister can also direct another body to take on the functions of a care board if a care board is failing.

Transfer of powers from local authorities

- The NCS consultation proposed moving responsibility for social care from a local level to a national level, with accountability moving to Scottish Ministers. This means that instead of 31 different approaches to social care, policy will be standardised at a national level.
- The Consultation also asked respondents whether the NCS should include children's social work services and criminal justice social work.
- The Bill would transfer powers currently held by local authorities to Scottish Ministers, as broadly outlined in the original Consultation.
- As there was no definitive resolution, the Bill requires further consultation on the transfer of criminal justice and children's social work.

Aspects of Healthcare

- At present, healthcare is delivered by the NHS and is treated differently from social care which is delivered by local authorities.
- The Bill would allow ministers to 'designate' certain healthcare functions as social care instead.

Information sharing

- The NCS Consultation proposed making it easier for relevant information to be shared between different areas of health, social work, and social care. It is hoped that this would enable better communication, so that people only need to share information once. This was strongly supported by family carers in our engagement events.
- The Bill would provide powers through secondary regulation to allow information sharing between the NHS and NCS. This also creates a legal basis for the information to be shared under GDPR legislation.

Right to care breaks

- The consultation proposed to strengthen rights for carers by amending the Carers (Scotland) Act 2016 to create a statutory right to care breaks. It also sought views on what format the care breaks should take: a fixed universal minimum, or a flexible package of support.
- From our engagement with carers there was clear support for a statutory right to care breaks, and a preference for flexible support options.
- The Bill would amend the Carers Act and create the statutory right to care breaks. It would also place a new duty on local authorities to provide support to allow the carer to take sufficient care breaks. Importantly it states that local or national eligibility criteria could not be applied to limit this.

Care home visiting

What is the current situation?

- During the pandemic large numbers of care homes closed their doors to family and other visitors, with the stated aim of protecting residents from covid. This practice continued in many homes long

after other restrictions were eased, with different care home providers interpreting the rules differently.

- The practice of closing care homes to visitors caused significant distress to many residents and their relatives. It has been the subject of much debate, as well as a petition to the Scottish Parliament.
- A recent report commissioned for the independent Scottish Covid-19 Inquiry found that resident's human rights were breached by some of the practices in homes during the pandemic ([see here](#)).
- Families have called for the introduction of 'Anne's Law' to allow a designated visitor to be allowed to visit care homes at all times.

What does the Bill say?

- The Bill would give powers to Scottish Ministers to require care homes to comply with any directions made in relation to visits.
- In practice this would allow rules on visiting care homes to be applied across Scotland.
- The Bill also requires that this is done in consultation with Public Health Scotland, and the direction may be changed or taken away. This suggests that where a national lockdown is required again, Public Health Scotland could still recommend that homes are closed to visitors, but this would be done on a national rather than a localised level. The minister would have ultimate decision on whether or not to follow this advice.

Powers of the Care Inspectorate

- The consultation noted some of the limitations of the Care Inspectorate's current powers. Whilst the Inspectorate can raise concerns about care homes, providers are typically given time to address these. This has led to concerns that some providers may avoid fixing problems.
- The Bill would give powers to the Care Inspectorate to immediately revoke a care home's operating licence in specific circumstances.
- Powers will also be given to Healthcare Improvement Scotland (HIS) to conduct inspections on behalf of the Care Inspectorate. This was a temporary provision introduced during the pandemic, and the Bill would make this arrangement permanent.

What does this mean for people living with dementia?

The Bill only outlines the legislation that needs to be put into place to enable the NCS to be created. As a result, there is not much detail on how many of the services will look in practice. Much of this detail will come through regulation and secondary legislation.

The Scottish Government have made a very clear commitment to involving people with lived experience as much as possible in co-designing the National Care Service. They have recently launched a 'co-design school' to involve those with lived experience, and people who work in and deliver social care in designing what the new NCS will look like. More details on these plans are available [here](#).

About Dementia will be engaging with both the National Care Service Implementation Team and the Dementia Policy Team at the Scottish Government to ensure that our members are actively involved in this process. We will also let you know when there are any developments with this.

The Scottish Parliament has published a call for views on the Bill with a deadline of **2nd September**. We will be putting in a response to this call and will be speaking to members to ensure your views are included. If you would like to put in your own views, you can find all the information you need [here](#).

What does this mean for unpaid carers and family members?

The benefits for unpaid family carers are clearer to see at this stage. The Bill would amend the Carers Act (2016) to provide a statutory right to sufficient care breaks for unpaid family carers. Carers would also have increased rights to visit family members living in care homes.

The co-design school and other opportunities are also open to unpaid carers, and we would encourage all of our members to get involved in this process to ensure your views are taken into account.

What is being said about what the Bill contains?

The parties at Holyrood are very divided over their views on the creation of the National Care Service. The main area of contention is over whether the NCS should be centralised under Ministerial control as is proposed in the Bill, or decisions on social care should continue to be made at a local authority level. Below are some of the formal comments made about The Bill by MSPs from each of the parties represented at Holyrood:

Humza Yousaf, Scottish Government Health Secretary on Scottish Government website:

“This is the most ambitious reform of public services since the creation of the NHS.

People have told us they want a National Care Service, accountable to Scottish Ministers, with services designed and delivered locally. That’s exactly what we are going to deliver.

The design of the NCS will have human rights embedded throughout, and the actual shape and detail of how the NCS works will be designed with those who have direct experience of accessing and providing social care.

We are going to end the postcode lottery of care in Scotland. Through the National Care Service we’re going to ensure everyone has access to consistently high-quality care and support so they can live a full life. This is our ambitious goal and while it will not be easy to achieve it is vital that we do.”

Craig Hoy, Scottish Conservative and Unionist Party, Shadow Health Minister for Mental Health and Social Care, The Herald 20th June 2022:

"The SNP have spent years hollowing out local councils with savage funding cuts and now they are mounting a direct assault on them with their plans to scrap local accountability and impose total ministerial control via a National Care Service.

The SNP Government's own figures show that establishing a National Care Service could cost an eye-watering £1.3 billion in administration costs. We simply can't afford to see that sort of money diverted from frontline local services."

Gillian McKay, Green Health Spokesperson, on Twitter, 23rd June:

" I think some of the National Care Service should be emboldening specialist third sector providers as well as driving profit out of the system. I look forward to engaging with unions and many other stakeholders on this issue. "

Alex Cole-Hamilton, Scottish Liberal Democrat Leader in The Herald, 20th June 2022:

"It amounts to nothing more than an SNP takeover and a top-down reorganisation of care. Just as with the police, it will waste money and reduce services. It would be terrible for care services if authority was to be taken away from local councils and permanently handed to the same Scottish Government ministers who were responsible for sending untested and Covid-positive patients into care homes at the start of the pandemic.

Jackie Baillie MSP, Scottish Labour Health and Social Care Spokesperson in The Herald, 20th June 2022:

"What this represents is nothing less than the biggest power grab in the history of Holyrood – one that threatens the very existence of local government. After years of steadfast opposition to a National Care Service, the SNP is now using the creation of such a service to disempower local government and centralise yet more power."

What will happen next?

The introduction of the Bill is just the first step towards making legislation. Members of the Scottish Parliament (MSPs) will now consider the proposals in the Bill through the committee system. MSPs can propose to change or remove what is there, and to add new things if they think they are needed. The Bill will then go back to the full parliament, where there will be another opportunity for parties to change or

add to the Bill. Finally, there will be a vote of the full parliament on whether to pass the Bill into legislation. The Scottish Government are expecting this process to take at least a year.

As we made clear at the start of this briefing, there are already several powers that the Scottish Government has to make the National Care Service happen. While the Bill is making its way through the Scottish Parliament, The Scottish Government plan to start working on the co-design process around other elements of the NCS. We will keep members informed throughout this process and ensure you have every opportunity to help shape this work.

We want to know what you think

What do you think about what has and hasn't been included in the Bill? As ever, we want to know what you think.

Our next Policy Drop In on **11th August at 11am** via Zoom will be focused on the NCS Bill and is a great opportunity to share your thoughts with us. If you would like to attend this, please get in touch using the details below.

Email: AboutDementia@agescotland.org.uk

Twitter: [@AboutDementiaSc](https://twitter.com/AboutDementiaSc)

If you can't make that date, feel free to get in touch directly to share your views. You can also keep an eye on our newsletter and twitter to find out when we'll be speaking to members about this.

Useful links

We have embedded links throughout this document. All of the links are also available here:

- National Care Service Bill as introduced to Scottish Parliament, and supporting documents: <https://www.parliament.scot/bills-and-laws/bills/national-care-service-scotland-bill/introduced>
- Link to the Feeley Review report on Adult Social Care, February 2021: <https://www.gov.scot/publications/independent-review-adult-social-care-scotland/>
- About Dementia submission to Independent Review on Adult Social Care October 2020:
- About Dementia submission to Scottish Government consultation on National Care Service, November 2021:
- BBC News story on COVID-19 Human Rights Report: <https://www.bbc.co.uk/news/uk-scotland-61814662>
- Scottish Government co-design plans for the National Care Service, and how to get involved: <https://www.gov.scot/publications/national-care-service-co-design-national-care-service/pages/1/>
- Link to the Scottish Parliament call for views on the National Care Service Bill: <https://yourviews.parliament.scot/health/national-care-service-bill/>