

National Care Service Bill

Introduction

The National Care Service Bill [was published](#) on 21 June. This briefing focuses on the implications and consequences of the Bill.

The Bill is a piece of enabling legislation and provides the legal framework for the NCS. Most of the detail has still to be developed and Regulations will need to be laid before Parliament for scrutiny and decision before any transfers of functions and staff or changes can take place. The aim is for the National Care Service to be up and running by the end of this parliamentary term in 2026.

Key points

The First Minister's claim that the establishment of the NCS on a par with the creation of the NHS is a sham.

- The Bill confirms that what is called a 'National Care Service' by the Scottish Government is the current system, with added ministerial oversight and some national standard setting.
- It locks in social care as a commodity in a market rather than a public service for citizens. In doing so it confirms profit from care as a founding principle of the National Care Service.
- This Bill effectively seals the fate of local authorities as a tier of government. It is the most outright and comprehensive assault on local government in a generation.
- It has profound implications for the future delivery of social work and social care services with strong potential to extend the market.
- Given the work underway a firmer public commitment to sectoral collective bargaining for social care is needed.

The Bill takes forward the government proposals published in August 2021 with few changes ([outlined here](#)). This is no surprise. The strong message from government throughout the consultation was 'this is happening'. NHS primary and community services are no longer included in the NCS, but Ministers will be able to transfer any health board or special health board function or property to the NCS or a Care Board. NHS staff cannot be transferred.

Profit from care

This is an enabling Bill and the Scottish Government has chosen to enable private investment firms to continue making profits from running social care services. In doing so it has chosen to ignore the [evidence](#) about the human cost of their involvement in social care.

Impact on direct delivery of social work and social care

Statutory responsibility for social care and social work ('social services') will be removed from local authorities and centralised. **This is effectively the end of local democratic control of social services. It is a major assault on local government.**

The services affected are social work and social care for adults and children, local authorities' role in mental health care, adult and child protection and justice social work. While adult social care is definitely included in the NCS, further public consultations are required before decisions are made about transferring children's services or justice social work functions.

In the NCS, social services will be accountable to Ministers, rather than to local citizens within a system of local democracy. Instead of your local councillor you will have a complaints process, as you do with your energy provider.

- This spells the end of publicly run and delivered democratically accountable services to the public in social care and social work.
- Local authorities are reduced to being service providers – contractors - which Care Boards can choose to commission. Removing their statutory powers means there is no reason for councils to continue to employ social care or social work staff. The Bill addresses this by amending the 1973 Local Government (Scotland) Act to create a clear legal basis for councils continuing to employ staff in services that they no longer have a statutory duty to provide.
- In social care the loss of local democratic control further weakens the potential for insourcing of children's and adult services, including as part of local Community Wealth Building strategies. The concept of 'insourcing' will become meaningless.
- In the future it will be up to Care Boards, appointed by and acting under directions from Scottish Ministers, to decide whether to commission councils to provide social care and social work services. Or whether to take over direct delivery themselves, with staff transferring from local authorities to the Care Board.¹
- The Bill also enables Care Boards to procure these services, dependent on financial context and developing market conditions. There is a potential risk here for existing local authority care at home and residential care services, but also in the longer term potentially for social work functions, given there is already a well-developed UK market in areas like fostering and adoption. As to be expected given the involvement of KPMG, by choosing not to exclude this in the Bill, the extension of the market is enabled for the future.

The Workforce

Ethical commissioning and procurement are seen by government as the main route to Fair Work in social care including improvement to pay, terms and conditions. It is claimed that direct accountability to Scottish Ministers within a NCS will make the difference. What the Bill falls far short on is details of weighting, scrutiny and enforcement of Fair Work standards. Three years after the [Fair Work in Social Care report](#) called for urgent action, collective bargaining and funding conditionality are still no more than 'potential mechanisms'.² A national forum to advise on workforce priorities, terms and conditions and collective bargaining was part of the NCS

¹ National Care Service Bill. Explanatory Notes, p.22.

² National Care Service Bill. Policy Memorandum, p.23.

consultation. This has been pushed even further away, with the government saying it will 'consider arrangements' and 'advise' the NCS, which is not due to be in place until 2026.

The bill creates an insecure future for local authority services. It enables the breaking up of the local government workforce and removal of parts of the workforce from current bargaining arrangements.

It provides for local authority staff who perform a function to be transferred to the NCS, with TUPE protection. The power to transfer staff does not apply to NHS staff.

Terms and conditions including pensions of Care Board employees will be set by Scottish Ministers. The pension rights of all workers transferred to Care Boards are therefore at risk as TUPE does not guarantee the maintenance of existing pension arrangements.

A National Social Work Agency will be created within government as part of the NCS. There are things to welcome here including the focus on national workforce planning. The new NSWA will also be responsible at national level for social workers' pay, terms & conditions. The Bill implies the removal of social workers from local government SJC sectoral bargaining arrangements. It is unclear what this means for the rest of the local authority social work team.

The NCS: still to be decided

- Local Care Boards: number & geographies; membership & voting rights; duties, functions & services provided by care boards, both direct and commissioned.
- Workforce, employment, and contractual arrangements, including transfer of staff from local authorities.
- Inclusion of children's social care services and justice social work (it is recognised that further evidence and public consultation is needed).

Conclusion

Amid a social care and social work crisis very significant sums of public money and resources are being diverted into bureaucratic restructuring rather than meeting people's needs.

The additional £840 million for social care announced in the 2022 [Spending Review](#) is intended to deliver the 25% uplift previously promised over the lifetime of this parliament, tied to the cost of establishing a National Care Service. However, this is already regarded as underestimating the costs of delivering the Feeley Review recommendations, without even considering needs within social work, a service which is also in crisis, underfunded, understaffed, and undervalued.³

It is time to take the profit out of care. Care should be delivered in and for the community – as a service not a commodity. We believe that is what most people want and expect from a National Care Service.

As the Bill proceeds we will continue to argue for this, for publicly run and delivered social services, and against this attack on local democracy.

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³ [Setting the Bar: towards an indicative maximum caseload for Scotland's public sector social workers - Social Work Scotland](#)