

## THE NHS AND THE NATIONAL CARE SERVICE

### Introduction

The [National Care Service \(Scotland\) Bill](#) was introduced to Parliament on 21 June by Cabinet Secretary for Health, Humza Yousaf. It is currently being scrutinised by parliament. The Bill provides the legal framework for a National Care Service with most of the detail still to be developed and set out later in regulations. The aim is for a National Care Service to be operational in 2026.

If the Bill is passed it will have a profound effect on across all of Scotland's public services. It is a direct attack on the principle of publicly delivered public services. This short briefing looks at the implications that the Bill has for the NHS.

### Key points

- **The National Care Service will not be like the NHS. It will not directly deliver services. It will commission and procure services from the public private**
- **The Bill allows Scottish Government Ministers to transfer any function they wish from the NHS to the NCS – and also transfer NHS properties to the ownership of new providers**
- **The Bill allows the new Care Boards to prevent Health Boards (and councils) from even bidding to provide services which transfer to the NCS**
- **There is no clarity from the Scottish Government about what will happen to staff or pension entitlement in the event of functions transferring.**

### The National Care Service

The Bill does not set up a system like the NHS to directly deliver services. Instead the National Care Service (NCS) will procure and commission services from public, private and third sector providers. In other words the NCS is founded on the idea of the purchaser/provider split that so much effort went into removing from the NHS. The Scottish Government intend that once operational the national care service will have responsibility for social care, social work and community health.

The service will be run by new quangoes – Care Boards. How many Care Boards there will be will be decided by Scottish Government Ministers after the legislation is passed. Ministers will appoint and remove the members of the Care Boards and all the Boards strategic plans will need to be approved by Ministers.

The Bill will not take profit from the care system – it will take services from the NHS. The new system will reduce transparency and accountability as when services are transferred to private or third sector providers they will not be covered by Freedom

of Information legislation.

### **Scope of the NCS**

The intention of the Scottish Government is that all of social care and social work will become the responsibility to be commissioned and procured by the NCS. They also include “Community Health” as a function which will transfer – but are vague about what will be included. The Bill allows Scottish Government ministers to transfer 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 (Section 28). If ministers think it will “best reflect National Care service principles”. As well as transferring functions out of the NHS to the NCS the bill will allow Ministers to transfer property from the NHS to whoever the “new function holder” is.

When putting services out to tender Care Boards can if they wish exclude Councils or the NHS from being allowed to bid to provide the services. Instead reserve them for third sector providers. Section 41 of the Bill (Procurement) is entirely about allowing Care Boards to do this. In their consultation before producing the Bill the Scottish Government expressed the view that “There is no evidence that providing services through the public sector increases quality, in fact in community based services, quality is generally highest among third sector providers.”

### **Transfer of Staff**

The Bill is explicit in allowing Ministers to transfer local govt employees out of the employment of councils to whoever is now providing the service. Transfer of NHS staff by the Minister is explicitly ruled out. The Bill though says nothing about Health Boards transferring staff out of their employment in the event that an NHS service is deemed to be an NCS service – and the Care Board decides to give the contract to provide it to someone outside the NHS. UNISON Scotland has approached the Scottish Government for more detail but the answers from the Cabinet Secretary from Health lack clarity. Having been asked about transfer of responsibilities and staff out of the NHS he replied only in the context of social care and would guarantee only that “Where Health Boards are commissioned by NCS Boards to provide services, NHS staff will continue to be employed by the NHS, as they are now.” The issue of who would be providing the services if care boards decide to commission services from outside the NHS was not answered.

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