



Royal College
of Nursing
Scotland

Member briefing on the

National Care Service (Scotland) Bill

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Background

Following consultation with stakeholders, the Scottish Government has set out draft legislation designed to implement a National Care Service (NCS) in the summer of 2022. The Bill and explanatory notes are [published](#) on the Scottish Parliament website. As anticipated, the legislation makes Scottish Ministers responsible for establishing the NCS and gives them the power transfer a wide range of health and social care functions to new Care Boards. The Bill will not nationalise services, instead it will provide the power to transfer functions from local authorities and health boards to the NCS. Members working for public, private and third sector providers will continue to have the same employer.

This briefing sets out RCN Scotland's initial response to the Bill as well as providing an outline of what the legislation does.

The RCN submitted [written evidence](#) to the Health, Social Care and Sport Committee and followed this up with an evidence session, which RCN Scotland Director Colin Poolman attended on 15th November 2022. You can watch the evidence session [here](#) and read a transcript of the session [here](#). The RCN is of the view that, because of the level of uncertainty around the proposals for a National Care Service, as well as the scale of the workforce challenge in social care and community health service, that now is not the time for fundamental reform and the NCS proposals should be paused.

It is the Scottish Government's intention that the NCS come into force by the end of the current parliamentary term in 2026. Notwithstanding our opposition to reform at this time, if Parliament wants to progress with this proposal, the RCN will work with MSPs to ensure the legislation is as good as it can be.

We are keen to ensure that our ongoing work on this clearly represents the voice of our members. If you have views on the proposals, and would like to inform RCN Scotland's continued response to the development of the NCS, please email policyscotland@rcn.org.uk

RCN Scotland's view on the National Care Service Bill

While we agree that the current way that adult social care operates in Scotland needs radical overhaul, RCN Scotland has not taken a view on the merits of creating a NCS. Our members have told us that they can see potential advantages as well as problems in this proposal. The proposals are significant for RCN members working in a variety of settings which are under severe pressure. In light of the concerns we express below, as well as the widespread concerns expressed by others, we are of the view that the proposal for an NCS should be paused in order to give the Scottish Government and others time to solve, in particular, the nursing workforce crisis.

RCN Scotland's view on the National Care Service Bill (cont.)

The RCN's focus is on ensuring that, if the creation of a NCS is progressed, the professional nursing perspective is understood and appreciated given the increasing clinical acuity in social care and community settings. Nursing is likely to be the largest staff group within the NCS and, as such, we're concerned by the lack of thought given to nursing to date. It is essential that policy makers hold the vital contribution of nursing central to their thinking when scrutinising the Bill and developing detailed plans for the creation of a NCS.

Our evidence on the Bill to date makes it clear that the Scottish Government will not achieve its stated purpose of improving the quality and consistency of social care services, without first tackling the workforce crisis across health and social care, implementing the Health and Care (Staffing) (Scotland) Act 2019 and delivering fair pay for nursing staff working in all settings.

RCN Scotland is concerned that the Bill contains very little detail around how the NCS will operate and how it will interact with the NHS. In particular there is a lack of clarity around which services will be transferred to the NCS and the extent to which this will include community health services (although it does make clear that staff working for the NHS cannot be transferred to the NCS). It is extremely concerning that much of this detail will be left to secondary legislation or non-legislative means, which makes scrutiny and consultation more challenging.

RCN Scotland has set out a number of priorities for social care reform and the establishment of the NCS, however the lack of detail in the Bill means we cannot be confident that this complex and challenging programme of reform will support these priorities being met.

RCN Scotland priorities for the NCS

The proposals should be paused and focus needs to begin with solving the nursing workforce crisis in adult social care and community health services.

If an NCS is to be established, what is needed is as follows:

- Clear clinical and professional governance structures and processes for nurses working in services
- A workforce which reflects clinical need. In order to have a workforce that can meet increasingly complex clinical needs and provide a sustainable service for the future, there needs to be further investment and recruitment to the registered nurse role within social care settings and appropriately staffed and resourced community nursing teams.

RCN Scotland priorities for the NCS (cont.)

- Workforce planning in social care and community settings should ensure compliance with the requirements of the Health and Care (Staffing) (Scotland) Act 2019.
- Effective coordination of health and social care services to ensure a person-centred approach. The interface between the NHS and the National Care Service will be crucial and must be properly addressed – there must not be barriers for patients or staff.
- More detailed consideration is required about mental health models, pathways and services.
- Fair pay, terms and conditions for nursing staff employed within the independent sector as well as improved access to training and development and clear career pathways. Registered nurses and nursing support workers employed within the social care sector should enjoy at least equivalent pay, terms and conditions as nurses working for the NHS. The Scottish Government should ensure sufficient funding is put into the adult social care system to achieve this and contracts must be of sufficient value to enable this.
- A commissioning process which:
 - ◇ Is based on outcomes, not costs;
 - ◇ properly assesses unmet need and future demand;
 - ◇ ensures that terms and conditions for those working within commissioned services are based on Fair Work principles;
 - ◇ obliges and funds providers to be able to staff their services in accordance with the Health and Care (Staffing) (Scotland) Act 2019, ensuring that everyone using social care services has access to the nursing care they need.

RCN Scotland's evidence also raised the following points:

- There is little in the Bill around how Care Boards will be constituted and nothing on staff governance on the face of the Bill. RCN Scotland is of the view that every Care Board should have an Executive Nurse Director, with full Board member status, and that this role would be best undertaken by an individual other than the NHS Health Board Executive Nurse Director.

RCN Scotland priorities for the NCS (cont.)

- We are particularly concerned that the Bill, and its accompanying documents, make no mention of the Health and Care (Staffing) (Scotland) Act 2019. The 2019 Act is due to come into force in spring 2024 and is urgently needed to address the workforce crisis in the sector and to ensure care homes are better equipped to meet the needs of residents. RCN Scotland understands that the Scottish Government intends to an amendment to the NCS Bill to make it clear that the safe staffing legislation will apply to all NCS services. We will be pushing for this to happen, as a priority.
- More detail is also needed around the impact of the proposals for an NCS on community nursing. RCN members perceive a risk that community health services will be seen as second order in a NCS focused on social care, and in a National Health Service that is responsible for employing staff but not delivering services or establishing strategy.
- RCN Scotland agrees with the principle that certain national standards are desirable and necessary to improve equity of access to social care, which underpins the proposal to establish a National Care Service Charter. However, it is also vital that national standards require staffing levels and skills mix appropriate to the needs of service users and consideration should be given to extending the Charter to include fair work as one of the ways of achieving improved outcomes.
- We remain unclear about how exactly the Scottish Government proposes to “co-design” the National Care Service and what that will mean in practice. Importantly, co-design must involve people who deliver services as well as service users themselves.

What does the Bill do?

The legislation:

The Bill is primarily what is termed ‘framework legislation’ meaning that it does not contain all of the detail needed to create a National Care Service (NCS) on the face of it. Instead, it provides Scottish Ministers with the power to create the framework needed to establish an NCS. The detail will be left to secondary legislation, guidance, nationally set standards and local decision making.

Part 1 - Establishment of the NCS

Part 1 (the bulk of the legislation) establishes the NCS. It makes the Scottish Ministers responsible for organising the National Care Service, enables them to establish new public institutions called Care Boards and gives Ministers power to make regulations transferring health and social care functions to the institutions comprising the National Care Service.

Section 1 of the Bill establishes a set of principles by which the NCS is meant to be run. Section 2 of the Bill gives Scottish Ministers responsibility for the NCS and requires them to “promote...a care service designed to secure improvement in the wellbeing of the people of Scotland” and in discharging this duty must do so in a way that “seems to them to best reflect the National Care Service principles”.

The Bill also states that ethical commissioning practices, contained in strategic plans, must similarly reflect the principles. One of the principles includes reference to fair work and recognizing staff for the important work they do.

The Bill does not define which services will form part of the NCS. Instead, it allows Scottish Ministers to transfer functions from local authorities and from the NHS to themselves or to Care Boards. The Bill also allows for the transfer of staff performing functions which have been transferred to the NCS. Any staff transferred in this way are protected by existing regulations, but significantly, staff of a health board cannot be transferred.

Care boards

Scottish Ministers are given the power to establish and abolish Care Boards. These boards must be arranged so that together they cover the whole of Scotland and do not overlap, but there is no restriction or limitation on the number of boards that can be set up. The Bill is not prescriptive on membership of Care Boards.

Strategic Plans

The Bill requires Care Boards and Scottish Ministers (if they are directly delivering or arranging for the delivery of care and support services) to publish strategic plans. The policy intention behind this is for these strategic plans to set out the arrangements in place for delivering services and how these arrangements have been designed to reflect the NCS principles. Strategic plans must also include the wider vision for the organisation, objectives and budget projections.

National Care Service Charter

The Bill creates a National Care Service Charter, a document which summarises people’s rights and responsibilities in relation to the NCS and the mechanisms available to uphold these rights. The Bill states that the Charter defines existing rights and does not in any way create new rights, responsibilities or amend existing rights.

Part 1 - Establishment of the NCS (cont.)

Ministerial power to intervene

The Bill requires Care Boards to comply with any direction issued to them by Scottish Ministers and gives the latter the power to remove all members of a Care Board, or in certain circumstances, transfer the functions of a Care Board.

Part 2 - Health and Social Care Information

Part 2 of the Bill gives Scottish Ministers the power to establish a scheme for sharing information to improve the efficiency and effectiveness of services provided by the NCS and NHS. The Bill's intention is to establish a Care Record and Information Standard, but it includes little detail about how this will be achieved.

Part 3 - Carers

Part 3 of the Bill includes modifications to existing law, including giving carers a right to breaks from providing care, as well as implementation of Anne's Law, which gives care home residents a statutory right to visitors. However, it also provides Scottish Ministers with powers to vary or revoke a visiting direction. Part 3 also allows Scottish Ministers to set out circumstances in which care service providers' registrations can be cancelled without first issuing an improvement notice.

Part 4 - Miscellaneous provisions

Part 4 contains miscellaneous provisions, including on interpretation and the regulation making powers conferred by the Bill. As is typical with legislation, the Bill also includes a number of Schedules, which primarily deal with the constitution and operation of Care Boards.



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