

ANGUS COUNCIL

POLICY AND RESOURCES COMMITTEE – 30 AUGUST 2022

CONSULTATION ON THE NATIONAL CARE SERVICE (SCOTLAND) BILL

REPORT BY CHIEF EXECUTIVE

**ABSTRACT**

This report requests that the Chief Executive is given a delegation to respond to the Calls for Views on the "[National Care Service \(Scotland\) Bill](#)" following consultation with the Leader of the Council and the Leader of the Main Opposition Group.

**1. RECOMMENDATIONS**

It is recommended that the Committee:

- (i) notes that the [National Care Service \(Scotland\) Bill](#) is at Stage 1;
- (ii) notes the content of the [Calls for Views](#) on the National Care Service (Scotland) Bill as detailed in Appendix A; and
- (iii) authorises the Chief Executive to submit the Angus Council agreed response by 2 September 2022 following consultation with the Leader of the Council and the Leader of the Main Opposition Group.

**2. ALIGNMENT TO THE COUNCIL PLAN**

- 2.1 Given the wide-ranging nature of the national consultation and draft response, the report is relevant to all aspects of the Council Plan 2022-24 priorities.

**3. BACKGROUND**

- 3.1 On 1 September 2020, the First Minister announced an Independent Review of Adult Social Care in Scotland as part of the Programme for Government. The principal aim of the review was to recommend improvements to adult social care in Scotland, primarily in terms of the outcomes achieved by and with people who use services, their carers and families, and the experience of people who work in adult social care. On 9 August 2021, the Scottish Government launched a consultation setting out proposals for the future delivery of social care in Scotland. At a Special Angus Council on 28 October 2021, Council considered and approved a response to this consultation. Report no 332/21 refers, (*please add link*).

The National Care Service (Scotland) Bill, (Bill), was introduced to Parliament on Monday 20 June 2022 and the Bill was published on Tuesday 21 June 2022 on the Scottish Parliament's website and can be accessed through this [Introduced | Scottish Parliament Website](#)

The Bill provides for:

- a charter of rights and responsibilities for social care, with a robust complaints and redress process;
- a power to transfer accountability for a range of services, including adult social care and social work services to the Scottish Ministers, subject to Parliamentary approval; and
- the Bill requires a further public consultation to be held in relation to children's and justice social work and the results to be laid before Parliament alongside any regulations. (A final decision on whether to pursue such a transfer in relation to those areas, and how that might be phased, will be subject to further detailed consideration and evidence gathering with key partners)

## 4. THE BILL

### 4.1 The Bill:-

- defines the National Care Service principles and requires Scottish Ministers to run the National Care Service in the way that seems to them to best reflect the principles
- establishes the Scottish Ministers' overarching responsibilities for the National Care Service.
- details that the National Care Service is not a single legal entity but an umbrella term encompassing:
  - (i) the care boards established under Bill, (see below) and
  - (ii) the Scottish Ministers, but only insofar as they are acting under powers or duties they have because of the Bill or regulations made in exercise of certain powers conferred by the Bill
- provides for a National Care Service charter summarising people's rights and responsibilities in relation to the National Care Service
- allows local and special care boards to be set up
- details that local care boards are boards with responsibility for particular geographical areas – no areas specified
- special care boards need not be given a particular geographical area of responsibility – may be national.
- details each care board must have a chief executive, who is to be appointed by the Scottish Ministers
- details it is for care boards to decide what other staff to appoint and in what capacities.
- details that staff appointed by a care board are appointed on such terms and conditions as the Scottish Ministers determine.
- provides for public authorities' legislation to apply in general to the care boards.
- provides that a care board may do anything which appears to it to be necessary or expedient for the purposes of, or in connection with, the performance of its functions, or otherwise conducive to the performance of its functions.
- gives Scottish Ministers significant powers to intervene in relation to Care Boards,
- allows the Scottish Ministers wholly or partly, to transfer to themselves or a care board a current Council social care and social work function. These are in terms of enactments mentioned in schedule to the Bill. (In essence the principal enactments from which Councils derive their social care and social work functions for adults and children).
- provides that it is pre-condition to transferring children's services or justice services that the Scottish Ministers first carry out a public consultation on the proposed transfer.
- allows the Scottish Ministers to transfer property and liabilities associated with any of the functions that are transferred from the Councils.
- where a function is transferred, Council staff who were performing the function can also be transferred in terms of TUPE
- allows Scottish Ministers to transfer the functions of National Health Service institutions, specifically health boards and special health boards, to care boards or to the Scottish Ministers in their capacity as a National Care Service institution.
- details that the staff of a health board or a special health board **cannot** be transferred into the employment of a National Care Service institution.
- allows Scottish Ministers to transfer the functions between the Boards and themselves.
- allows Scottish Ministers and care boards to compulsorily purchase land in connection with their National Care Service functions
- gives the Scottish Ministers power to establish a scheme for sharing information to improve the efficiency and effectiveness of services provided by, and on behalf of, the National Care Service and the National Health Service and to facilitate a nationally-consistent electronic health and care record.
- amends the Carers (Scotland) Act 2016 to ensure that carers get the support that they need to take sufficient breaks from providing care to cared-for persons.
- places a duty on Ministers to exercise that power in order to require providers of care home services to comply with any direction Ministers make about either or both of visits to residents of care home accommodation or by such residents.
- allows contracting authorities to reserve to "qualifying organisations" (as define in section 76(A) of Bill), the right to participate in procedures for the award of contracts.

Calls for views have been requested to look at how the proposed law could be improved, and whether the draft Bill should be passed into law by the whole Parliament.

## **5. PROPOSALS**

- 5.1 The response to the draft Bill requires to be submitted by 2 September 2022. In light of the short time frame to do this, it is proposed that the draft response is considered and approved for submission by the Chief Executive in time for 2 September 2022 following consultation with the Leader of the Council and the Leader of the Main Opposition Group.

## **6. FINANCIAL IMPLICATIONS**

- 6.1 There are no direct financial implications in terms of the calls for views on the Bill. There are significant financial implications for the Council in terms of the proposals in the Bill and commentary on these will form part of the Council's response.

## **7. OTHER IMPLICATIONS**

- 7.1 The feedback on the Bill so far has highlighted significant concerns and risks including around:

- divergence, in some aspects, from the proposals in the original consultation
- potential impact on local communities and public protection arrangements
- lack of detail included in the Bill itself and to be determined by ministers through secondary legislation given the significance of the arrangements being redesigned
- impact on the local authority workforce
- the impact of continued uncertainty regarding the future arrangements for children, families and justice services and timescale for clarity
- the impact of the scale of change and proposed timescale for implementation exacerbating existing pressures within social work and social care services in particular and the wider council workforce more broadly
- impact in councils and their wider future sustainability and planning
- uncertainties and lack of clarity on the financial implications, the detail on how the disaggregation or transfer of resources (including physical assets and workforce) will be negotiated and agreed
- arrangements for the ensuring continuity of service provision during transition

It is of note that the Bill explicitly rules out the transfer of NHS employed staff to the new Care Boards. The extent of disruption to the workforce, financial impact and other impacts are therefore anticipated to have a specific direct impact on local authorities and to a lesser extent on the NHS as the Bill currently stands. The reasons for this change are not clear.

In terms of economic benefits, the Bill provides that the purpose of creating the National Care Service is to improve the delivery of community health and social services. It is stated that Social work and social care services have a significant economic impact, and therefore investments in improving their quality and consistency can have a positive effect on the local economy.

## **8. EQUALITY IMPACT ASSESSMENT**

- 8.1 An Equality Impact Assessment is not required as this is a call for views response only.

## **9. CONSULTATION**

- 9.1 All members of the Council's senior leadership team have been consulted in the preparation of this report, including the Statutory Officers.

**NOTE:** No background papers, as detailed by Section 50D of the Local Government (Scotland) Act 1973 (other than any containing confidential or exempt information) were relied on to a material extent in preparing the above report.

**REPORT AUTHOR: Jackie Buchanan, Director of Legal and Democratic Services**  
**EMAIL DETAILS:**

List of Appendices:

Appendix A -

To help respond to the questions, it may be helpful to read the background information about the proposals and the key terms. [More information about the Bill](#)

Responders can respond to general questions on the Bill, questions about the financial memorandum and questions about specific provisions of the Bill. Responders are free to complete the parts of the consultation that are of interest to them. Responders don't need to answer all parts of the consultation, or all the questions.

### Section 1

#### General questions:

The Policy Memorandum accompanying the Bill describes its purpose as being “to improve the quality and consistency of social work and social care services in Scotland”. Will the Bill, as introduced, be successful in achieving this purpose? If not, why not?

Is the Bill the best way to improve the quality and consistency of social work and social care services? If not, what alternative approach should be taken?

Are there any specific aspects of the Bill which you disagree with or that you would like to see amended?

Is there anything additional you would like to see included in the Bill and is anything missing?

The Scottish Government proposes that the details of many aspects of the proposed National Care Service will be outlined in future secondary legislation rather than being included in the Bill itself. Do you have any comments on this approach? Are there any aspects of the Bill where you would like to have seen more detail in the Bill itself?

The Bill proposes to give Scottish Ministers powers to transfer a broad range of social care, social work and community health functions to the National Care Service using future secondary legislation. Do you have any views about the services that may or may not be included in the National Care Service, either now or in the future?

Do you have any general comments on financial implications of the Bill and the proposed creation of a National Care Service for the long-term funding of social care, social work and community healthcare?

### Section 2:

The Bill is accompanied by the following impact assessments:

[Equality impact assessment](#)

[Business and regulatory impact assessment](#)

[Child rights and wellbeing impact assessment](#)

[Data protection impact assessment](#)

[Fairer Scotland duty assessment](#)

[Island communities impact assessment](#)

Do you have any comments on the contents and conclusions of these impact assessments or about the potential impact of the Bill on specific groups or sectors?

### **Section 3:**

#### **Financial memorandum questions**

Did you take part in any consultation exercise preceding the Bill and, if so, did you comment on the financial assumptions made?

If applicable, do you believe your comments on the financial assumptions have been accurately reflected in the financial memorandum (FM)?

Did you have sufficient time to contribute to the consultation exercise?

If the Bill has any financial implications for you or your organisation, do you believe that they have been accurately reflected in the FM? If not, please provide details.

Do you consider that the estimated costs and savings set out in the FM are reasonable and accurate?

If applicable, are you content that your organisation can meet any financial costs that it might incur as a result of the Bill? If not, how do you think these costs should be met?

Does the FM accurately reflect the margins of uncertainty associated with the Bill's estimated costs and with the timescales over which they would be expected to arise?

### **Section 4:**

#### **Questions on specific provisions**

There is also the option to give your views on specific provisions in the Bill. There is no obligation to complete this section of the call for views and respondents can choose to restrict their comments to certain sections of the Bill.

In providing comments on specific sections of the Bill, please consider:

Whether you agree with provisions being proposed?

Whether there is anything important missing from these sections of the Bill?

Whether there is anything you would disagree with or there are amendments you would wish to propose to these sections of the Bill?

Whether an alternative approach would be preferable?