

T: 0300 244 4000
E: scottish.ministers@gov.scot

Audrey Nicoll MSP
Convener
Criminal Justice Committee

13 January 2023

Dear Audrey,

I am writing to you in relation to the National Care Service (NCS) (Scotland) Bill and the Criminal Justice Committee's request for further information following the evidence session on the Bill with the Committee on the 23rd of December 2022.

Please find my responses to your questions as follows:

Q. To set out the process for scrutiny of the relevant Subordinate Legislation by the committees and the Parliament, which would come forward in the event of the decision to transfer Justice Social Work (JSW) services to the NCS; in addition, the wider timetable for SSIs around the establishment of the NCS under the Bill, and whether you would expect any SSIs on the transfer of JSW to come to the Criminal Justice Committee for consideration in due course, or to the lead committee currently looking at the Bill.

Section 46(3) of the Bill provides that any regulations to be made under section 27 to transfer functions from local authorities to the Scottish Ministers or to a care board will be subject to the Parliament's affirmative procedure. As set out in Rule 10.6 of the Standing Orders of the Scottish Parliament, this means that the regulations cannot be made unless the Parliament approves them by resolution, following consideration and a recommendation from the lead committee. Under section 30, when laying such regulations for the Parliament's scrutiny, the Scottish Ministers must also lay before the Parliament a summary of the process by which they consulted about the function transfer that the proposed regulations would effect, and the responses they received to that consultation.

Rule 10.2 of the Standing Orders of the Scottish Parliament sets out that "1. The lead committee is the committee within whose remit the subject matter of the instrument falls. 2. Where the subject matter of the instrument falls within the remit of more than one committee, the Parliament may, on a motion of the Parliamentary Bureau designate one committee to be the lead committee. Copies of the instrument or draft instrument shall be sent to the other committees which may also consider the instrument or draft instrument and make any

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recommendations they consider necessary to the lead committee by a date specified in the business programme.”

It is not possible at this stage to set out a detailed timetable for the SSIs required for the establishment of the NCS, in advance of the passage of the Bill and of the co-design process. It will be necessary for the SSIs establishing care boards, under section 4 of the Bill, to be made before any instruments transferring functions to such boards.

Q. To set out the details of the private contractor to undertake the research relating to justice social work as soon as it is permissible to put details into the public domain

Following an open procurement process, Ipsos Scotland and Professor Beth Weaver have been appointed to undertake this programme of research. The contract will be for a period of 9 months with the option to extend for an additional 3 months. The maximum budget for this requirement over the initial Contract terms of 9 months is £80,000 (including VAT).

Q. To set out whether the provisions set out in the Bill on the possible transfer of JSW to the NCS are similar to those proposals made by the previous Labour-Lib Dem Scottish Executive in this area.

In 2003, the coalition Labour and Liberal Democrat Scottish Executive published a joint agreement, A Partnership for a Better Scotland. This included a commitment to (p.36) "... publish proposals for consultation for a single agency to deliver custodial and non-custodial sentences in Scotland with the aim of reducing reoffending rates".

This proposed 'single-agency' approach received initial opposition from stakeholders and thus a broader consultation was launched in March 2004. This consultation sought views on how the strengths and weaknesses of the current system and possible means, including changes in organisational structures, for improving custodial and non-custodial services.

The responses to this consultation indicated a lack of support for bringing together justice social work services (JSW) and the Scottish Prison Service (SPS) within a single correctional agency structure. In response, the Scottish Executive did not proceed with establishing a single agency and, in December 2004, set out alternative proposals for the creation of Community Justice Authorities.

This historical proposal differs from the possible transfer of justice social work services to a future National Care Service in that it centred upon the potential integration of custodial and non-custodial services delivered through both JSW and the SPS. Social Care and other Social Work services were not within the scope of this proposal as they are within the NCS Bill. Similarly, this Bill does not include any provisions relating to the organisational structure of the SPS.

Q. To set out the Scottish Government’s plans for ethical procurement, in terms of any new structure under the NCS, particularly if JSW is transferred to the NCS. The implication for the various 32 local authority procurement systems currently in existence and how and transfer of JSW to the NCS would interact with this.

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Integral to the aims of the National Care Service is the desire to better suit the needs and wants of those who receive and deliver care by reforming commissioning and procurement. As part of centring on lived experience experts and stakeholders, the programme intends to undertake a co-design and wider stakeholder engagement process. Through this process we will develop the structures and standards to support the consistent application of ethical procurement throughout Scotland, with the aim of ultimately meeting the needs of people. As such, operational details, including structural and transitional details, are still being developed.

Q. To set out in more detail the information the Minister gave in response to questions from Russell Findlay MSP on timetabling. Information on the timetable for the process of the current programme of research and engagement on JSW services, and the timing of the 12-week public consultation on the outcomes of that work. And the timing for any final Government decision on whether or not to transfer JSW to the NCS. It would be helpful if you could set these timings in the wider context of the Government's proposed timetable for the consideration of the stages of the Bill by the Parliament. And, if enacted, where the process for deciding on the transfer of JSW would come in the wider timetable for the subsequent actions to establish the NCS.

The timetable for the programme of work relating to justice social work services is as follows:

- November 2022: Stakeholder Reference Group established
- December 2022: Options Appraisal process begins
- January 2023: External research begins
- February 2023: Interim research findings
- August 2023: Final research findings
- September 2023: Options Appraisal concludes
- October 2023: In-principle decision
- November 2023: Public consultation opens
- February 2024: Public consultation closes
- April 2024: Final decision

This programme of work is aligned with the overall NCS policy and design activity. This includes ensuring that this wider activity be approached on the basis that JSW could be included within a future NCS should a decision be taken to include such services. Conversely, this approach ensures that should JSW not be included, that the implications of this are understood and that effective collaboration with other services within an NCS can continue. In addition, this timetable is aligned with activity to support a comparable decision on Children's Services. This will ensure that potential synergies are fully considered.

Q. The Minister gave a commitment that tendering for social work services under an NCS-model, would not lead to privatisation of those servicers, or outsourcing of staffing as contract providers change. The Committee would welcome further written detail on how the Government will deliver on these commitments.

No decisions have been taken at this stage on the employment of qualified social workers or the delivery of social work services under the National Care Service. These decisions need to be taken as part of the commitment to a co-design process in developing a NCS focused

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on the views of people needing care and support. Neither is there intent to privatise social work services or outsource social workers, but to implement a consistent approach to commissioning across Scotland.

Through the NCS we expect that the option to deliver social care services and supports in house by Care Boards, or through outsourcing to a range of providers including Local Government, private and third sector organisations, will be considered locally as part of an ethical commissioning strategy.

I hope this further information is useful to the Committee for Stage 1 of the Bill. Please do not hesitate to ask if the Committee has any further queries on the Bill.

A handwritten signature in black ink, appearing to read 'Kevin Stewart', with a stylized flourish extending to the right.

KEVIN STEWART

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St Andrew's House, Regent Road, Edinburgh EH1 3DG
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