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An t-Ionad Fiosrachaidh

Social Justice and Social Security Committee

**29th Meeting, 2022 (Session 6), Thursday,
10 November**

National Care Service (Scotland) Bill

Introduction

The [National Care Service \(Scotland\) Bill](#) was introduced on 20 June. The Committee agreed to hear from three witness panels on this Bill, before hearing from the Scottish Government.

The Committee will hear from two panels this morning focusing on social justice issues for unpaid carers, care users and the social care workforce.

Panel 1: Unpaid carers and care users

- Age Scotland
- Inclusion Scotland
- Mecopp – Minority Ethnic Carers of People Project
- Carers Trust Scotland

Panel 2: Social care workforce

- GMB Scotland
- Scottish Women's Budget Group
- Social Work Scotland
- Volunteer Scotland

Next week the Committee will hear from third sector social care providers before hearing from the Scottish Government.

Background

The [Scottish Government estimate](#) that around a fifth of the population are affected by social care – either as users, carers or employees.

The [National Care Service \(Scotland\) Bill](#) was introduced on 20 June and forms part of a wider package of reforms. It follows the report of the Independent Review of Social Care, led by Derek Feeley. That review made 53 recommendations, and concluded:

“We need to create a National Care Service that is based upon a new narrative, replacing crisis with prevention and wellbeing, burden with investment, competition with collaboration and variation with fairness and equity. And we need to put people at the centre of it: people who use social care supports, their families and carers, and people who work in social care services.”

The overall policy aim in creating a National Care Service is to improve the quality and consistency of social services. To this end, the Bill sets out the organisational framework. The detail will follow later. The Bill is in four Parts.

Part 1: sets out the principles of the National Care Service and provides for care boards to be set up. Care boards will carry out Ministers’ functions in relation to social care and community health. Ministers are given powers to transfer relevant functions from local authorities or from health boards. A charter, complaints process and independent advocacy are included in this framework structure.

Part 2: covers information sharing and information standards

Part 3: gives rights to breaks for carers, introduces ‘Annes Law’ on visiting care homes and makes changes to the powers of the Care Inspectorate and Health Improvement Scotland.

Part 4: final provisions, such as commencement.

The Schedules provide detail on the establishment of care boards.

A Framework Bill

The Bill sets out a broad framework. The impact on individuals will depend on detail to be set out in regulations, and how those regulations are implemented. It is one part of a wider programme of social care reform, which the [Financial Memorandum](#) lists as:

- Improving staff pay and conditions
- Bringing free personal nursing care rates in line national care home contract rates
- Removing charging for non-residential care

- Increasing investment in social work services
- Increasing focus on early intervention and prevention
- Investing in data and digital solutions to improve social care support

As Financial Memorandum notes, many of these ambitions might be supported by the Bill, but are not a necessary consequence of it:

“Creation of the NCS will support many of these reforms; for example, it is intended that it will support greater consistency in the provision of services focusing on early intervention and prevention, and in ethical commissioning which will promote Fair Work standards for staff. However, these are policy decisions to be made or sustained under the new framework, not necessary consequences of the Bill provisions.” ([Financial Memorandum para 15](#))

Reflecting this ‘framework’ approach, the Financial Memorandum identifies necessary costs of £63-£95million in 2023-24 for the measures set out in the Bill rising to £241 – £527m in 2026-27 ([FM table 1](#)). This does not include the cost of the broader policy ambitions around social care.

Setting out the detail later provides an opportunity to involve those with ‘lived experience’ but does provide less opportunity for parliamentary scrutiny.

Another example of a framework bill was what became the Social Security (Scotland) Act 2018. That also left much to regulations, but set out principles, a charter and rights to advocacy. There has also been an emphasis on learning from lived experience in the way systems and processes are developed. Members’ experience in scrutinising social security may therefore provide useful context to their consideration of this Bill.

Social Justice issues

Social Justice is strongly linked to human rights. In a [speech to the inaugural meeting of National Care Service Forum on 3 October](#), Kevin Stewart, Minister for Mental Health and Social Care said:

“The NCS will be delivered in a way that respects, protects and fulfils the human rights of people accessing care support and also their carers.”

The PANEL principles can provide a guide to taking a human rights based approach. [Scottish Human Rights Commission](#) describes how:

“Taking a human rights based approach is about making sure that people's rights are put at the very centre of policies and practices. The PANEL principles are one way of breaking down what this means in practice. These are: Participation, Accountability, Non-Discrimination, Empowerment and Legality.”

The Policy Memorandum to the Bill states:

“it is intended that the NCS will support a more rights based and person centred approach to social care, which is embedded in the NCS Charter and principles.” (para 260)

The Bill includes some specific features intended to enable this ambition to be achieved. These include:

- The National Care Service Principles (section 1) which must be reflected in strategic plans (sections 6 and 7) through ‘ethical commissioning strategies’ (section 10).
- The National Care Service Charter (sections 11, 12)
- Independent advocacy (section 13)
- Complaints (section 14, 15)
- Rights to breaks for carers (section 38)
- ‘Anne’s Law’ - visits to or by care home residents (section 40)

A [SPICe briefing on the Bill as introduced is available](#)

The National Care Service will be established by 2025-26. The model will be similar to health boards. It is not yet clear how many care boards will be established or which functions will be transferred to them.

Work of other Committees

Five other Committees are looking at this Bill.

- [Health and Social Care Committee](#) are the lead committee. They have held a [call for views](#) on the Bill, receiving 215 responses, and informal engagement events over the summer. Formal evidence sessions started on 25 October. They took evidence on human rights aspects on [1 November](#).
- Education, Children and Young People Committee. Evidence started on 8 November with a focus on children’s services.
- Local Government, Housing and Planning Committee. Evidence sessions started on 8 November.
- Finance and Public Administration Committee. Evidence sessions started on [25 October](#), focusing on the Financial Memorandum. That Committee has been quite critical of the Bill, the Convener said “I am struggling to remember a time when I have previously received submissions that have been quite so excoriating with regard to the financial aspects of a bill.” ([OR 25 October](#))
- Delegated Powers and Law Reform Committee will consider the regulatory making powers in the Bill.

Impact Assessments

The Scottish Government has published the following impact assessments for the Bill:

- [Equality Impact Assessment](#)
- [Island Communities Impact Assessment](#)
- [Data protection impact assessment](#)
- [Business and Regulatory Impact Assessment](#)
- [Children's Rights and Wellbeing Impact Assessment](#)
- [Fairer Scotland duty assessment](#)

The following highlights some key themes from these assessments relevant to this Committee's remit for social justice.

The Bill may have a greater impact on those in deprived areas:

- Those in deprived areas are [more likely to access social care](#), but also more likely to not receive support when they feel they need it.
- Unpaid carers in deprived areas are [more likely to be caring for 35 hours](#) a week or more.

Implementing Fair Work principles in NCS will have a gender impact:

- 83% of the social care workforce are women.

National standards and Ministerial accountability will “address the perception of a postcode lottery.”

The NCS will work within a set of principles to ensure social care, social work and community healthcare is designed with those who use it, supports the realisation of human rights, and is recognised as an investment in society (BRIA).

The BRIA notes that many of the policy ambitions for social care are not a necessary consequence of the Bill, however:

“these are developments that are made easier by the new arrangements for accountability and delivery of community health and social care.”

By setting out statutory principles, it is intended that a human rights approach will become embedded in the NCS. The BRIA states:

“service provision must be designed to reflect NCS principles, including the implementation of Fair Work, and a person-centred care first/human rights approach, ensuring that strategies focus on high quality care.”

Suggested themes for discussion

As other Committees are also scrutinising this Bill, the suggested themes do not cover all aspects of the Bill. The overall focus is on whether/how the Bill promotes social justice – in this paper taken to mean delivering a ‘human rights based approach’ and potential to impact on equalities and poverty.

The paper suggests seven themes - four themes for panel 1 and three for panel 2.

Panel 1: Unpaid Carers and care users: human rights based approach

- 1. Principles**
- 2. The approach: framework Bill and co-design**
- 3. Charter, advocacy and complaints**
- 4. Carers’ rights**

Panel 2: Workforce issues and social justice

- 5. Principle of co-design**
- 6. Principle of Fair work**
- 7. Impact on equalities and poverty**

PANEL 1: CARE USERS AND CARERS

THEME 1: Principles

The Bill sets out seven statutory principles for the National Care Service. These are that the services provided by the National Care Service are:

- a) an investment in society that (i) is essential to the realisation of human rights, (ii) enables people to thrive and fulfil their potential (iii) enables communities to flourish and prosper
- b) services must be financially stable in order to give people long-term security
- c) services are to be centred around early interventions that prevent or delay the development of care needs and reduce care needs that already exist
- d) are to be designed collaboratively with the people to whom they are provided and their carers
- e) opportunities are to be sought to continuously improve the services provided by the National Care Service in ways which— (i) promote the dignity of the individual, and (ii) advance equality and non-discrimination,
- f) the National Care Service, and those providing services on its behalf, are to communicate with people in an inclusive way, which means ensuring that individuals who have difficulty communicating (in relation to speech, language 5 or otherwise) can receive information and express themselves in ways that best meet their individual needs
- g) the National Care Service is to be an exemplar in its approach to fair work for the people who work for it and on its behalf, ensuring that they are recognised and valued for the critically important work that they do

Effect of the Principles:

In order to ensure the principles become embedded into the NCS, the Bill requires that:

- Ministers' actions should reflect the principles. (s.2)
- Ministers and care boards must consult on and publish strategic plans. These must include an ethical commissioning strategy (s.6, s7). An 'ethical commissioning strategy' is defined as one that reflects the Principles (s.10). i.e Strategic plans must reflect the statutory principles.

The BRIA describes how the Bill

“requires both Scottish Ministers and the local care boards to consult on and produce strategic plans and ethical commissioning strategies for the delivery of community health and social care. Through these plans, Parliament and the public will be able scrutinise the activities of the NCS and hold Scottish

Ministers and the NCS to account for the way the NCS principles are put into practice.”

MEECOP contributed to the [submission from Shared Care](#) Scotland. While they:

“actively welcome the commitment within the principles of the Bill to “advance equality and non-discrimination” we would argue that there is insufficient detail to see how this will transpire in practice.”

Frank Jarvis (SHRC) gave evidence to the Health and Social Care Committee on 1 November, and recommended that the Bill use the language of existing international human rights instruments such as [UN Convention on the Rights of Persons With Disabilities](#), saying:

“we could ensure consistency simply by adopting the consistent language of human rights standards across the whole programme.” ([Cttee OR col 12](#))

At the same meeting, Isla Davie, (Faculty of Advocates) said of the principles:

“when you translate them through the practicalities of the Bill they do not actually amount to anything.” ([Cttee OR col 13](#))

Members may wish to discuss:

- 1. Are these the right principles to ensure a human rights based approach is taken to social care?**
- 2. Does there need to be more in the Bill to ensure these principles are implemented in practice or are the existing provisions sufficient?**
- 3. Is this Bill required in order to ensure these principles are embedded in social care? Is there an alternative approach?**

THEME 2: The approach; a framework Bill and co-design

The PANEL approach to human rights emphasises participation and empowerment – people should be involved in decisions that affect their rights and be fully supported to take part in developing policy and practice which affect their lives. The Policy Memorandum states:

“The Scottish Government is committed to engaging with people with experience to codesign the detail of the new system, to finalise new structures and approaches to minimise the historic gap between legislative intent and delivery. For that reason, the bill creates a framework for the NCS, but leaves space for more decisions to be made at later stages through co-design with those who have lived experience of the social care system, and flexibility for the service to develop and evolve over time. Some of those future decisions

will be implemented through secondary legislation, others will be for policy and practice.” ([PM para 7](#))

The Scottish Government is [establishing various mechanisms to assist with co-design](#)- although these are outwith the Bill proposals. They include:

- [NCS ‘Design School’](#) – offering training and support to help people participate
- NCS ‘annual gathering – [an NCS Forum was held on 3 October](#).
- [Lived experience partners panel](#)
- [Social covenant steering group](#)

In taking a co-design approach, the NCS is building on the approach taken to [develop aspects of Scottish social security](#). Donna Bell, (Scottish Government) told the Finance and Public Administration Committee on 25 October that:

“There is huge enthusiasm for the co-design process. It is in line with the Scottish approach to service design, which has been used in the development of Social Security Scotland and has been very successful. The people who were involved in that process found it to be very useful” ([FPA Committee OR, col 6 25 October 2022](#))

Members may wish to discuss:

- 4. What are witnesses’ expectations of co-designing the National Care Service?**
- 5. How should the effectiveness of that co-design be assessed?**
- 6. Much of the discussion around co-design is about the initial development of systems and processes. Does the Bill do enough to ensure that, once the NCS is established, people are fully involved in decisions that affect their rights?**

THEME 3: Charter, Advocacy and Complaints

The PANEL principles include accountability, empowerment and legality: there should be remedies for when things go wrong, everyone should understand their rights and approaches should be grounded in legal rights. Elements of this can be seen in the approach to the Charter and provision for complaints. Part of the principles of ‘legality’ includes clarity as to what people’s legal rights are.

The Feeley Review observed that:

“Where rights are not upheld people must understand the means by which they can complain or seek redress and this must not be so cumbersome as to make that an impossible process for people to embark upon. They must also be provided with appropriate support in this process.” [Feeley Report p.26](#)

The Charter

Ministers must consult on, and make publicly available, a charter which:

- summarises the rights and responsibilities of service users, carers and anyone else
- describes how to uphold the rights set out

The Charter sets out existing rights and responsibilities, it doesn't create new ones.

The Charter must be laid in Parliament and be publicly available. It is reviewed every five years.

The [EQIA](#) states:

“The NCS Charter will provide clarity as to what rights and responsibilities individuals, their families, and their carers can expect and outline clearly the process for feedback and complaints.”

The NCS Charter will be developed by co-design. [The Social Security Charter was also developed by co-design](#). The Social Security Charter includes additional requirements – it must reflect the statutory principles and can be taken into account in court proceedings ([sections 15 and 19 Social Security \(Scotland\) Act 2018](#)).

Giving evidence to the Health and Social Care Committee on 1 November, Asla Davie (Faculty of Advocates) said:

“we had assumed that, once we got to the provisions on the charter, we would see the principles being adopted into the charter” ([Cttee OR col 4](#))

Frank Jarvis (SHRC) discussed accountability:

“The bill does not indicate how delivery of the charter will be monitored or what the consequences will be for care providers if its requirements are not fulfilled.” ([Cttee OR col 5](#))

Advocacy

Ministers may (but do not have to) introduce regulations about independent advocacy services (section 13). (Under existing legislation, people who have a mental health issue, learning disability, autism or dementia – have a right to independent advocacy. There is also a right to independent advocacy in Scottish social security) The BRIA notes that: “further co-design and engagement of stakeholders is needed to determine what independent advocacy will be needed to safeguard people's rights.”

Complaints

Ministers must make provision for a complaints service (section 14). Regulations may provide for remedies. Those remedies could include civil or criminal sanctions (section 15).

As with much of this Bill, the detail will be set out through a process of co-design.

At the Health and Social Care Committee on 1 November, Frank Jarvis (SHRC) said complaints mechanisms were an important part of ensuring human rights:

“Section 15, which is on complaints, says very little about remedies and sanctions. For us, those are the key vehicles, alongside monitoring, for accountability against the human rights standards. It is important not to leave that to regulations[...] The barriers to accessing justice for breaches of human rights are already well understood, but it is not clear how section 15 is addressing them.” ([Cttee OR col 14](#))

Members may wish to discuss:

- 7. Were witnesses involved in creating the Social Security Charter? If so, are there any lessons from that experience to be applied to developing the National Care Service Charter?**
- 8. The Charter does not create new rights but will explain to people what their rights are and how to complain. What difference will the Charter make?**
- 9. The Bill requires Ministers to set up a complaints service. What are some of the difficulties at the moment for people needing to complain about social care? Will a new complaints service solve these problems?**
- 10. Some people accessing social care already have a right to independent advocacy. Do rights to independent advocacy need to be extended, and if so, is this Bill is the place to do that?**

THEME 4: Rights for carers

Section 38 amends the Carers (Scotland) Act 2016 to provide a right to breaks for carers. At the time these 2016 provisions were described as placing:

“a duty on local authorities so that, in determining which support to provide to carers, they must consider in particular whether the support should take the form of a break from caring.” ([Policy Memorandum to Carers \(Scotland\) Bill](#))

The Policy Memorandum to this new Bill describes the 2016 provisions but notes that:

“Despite the above rights, relatively few unpaid carers (around 3%) receive statutory support for breaks from caring.”

[The Scottish Government accepted the Feeley review recommendation that:](#) “Carers should be given a right to respite [...] and a range of options for respite and short breaks should be developed.”

The Policy Memorandum describes the favoured option from consultation as being;

“easy-access support for carers with low levels of need and the option of personalised breaks support under the Carers (Scotland) Act 2016 for those in more intensive caring roles.” (PM para 209).

This Bill would introduce new duties on local authorities. The Explanatory Notes state that the provisions:

“ensure that carers get the support that they need to take sufficient breaks from providing care to cared-for persons.”

Specifically, the Bill provides that carer plans and young carer statements must include:

- an outcome that the carer can take sufficient breaks
- If they are not so able, the local authority must “identify the need for support to enable” them to take sufficient breaks.
- Information about that support must be included in the plan/statement
- The local authority must: “provide support to the carer to meet any need for support to enable the carer to take sufficient breaks from providing care for the cared-for person” that has been identified in their plan. (Section 38(8)(e) amending section 24 2016 Act). There is similar provision for young carers.

The Financial Memorandum sets out costs as rising from between £8m to £13m in 2025 up to between £82m to £133m in 2034-35.

This right to a break applies to those with Adult Carer Support Plans (ACSP) and Young Carer Statements (YCS). The FM assumes that this will build up over time so that ten years after implementation (2034-35):

- 34% of adult carers will have Adult Carer Support Plans and
- 64% of young carers will have Young Carer Statements

Of those, all young carers will get ‘an activity enabling break’, and the number proportion of adults getting a break increases according to the hours of care they provide. The table below is an extract from Table 9 in the FM.

Table 1: % of adult carers with support plans accessing breaks

Hours of care per week	<20	20 – 34	35 – 49	50 +
Proportion of adult carers with ACSP that receive replacement care	5%	10%	20%	50%
Number of weeks replacement care	1	2	3	4
Proportion of adult carers with ASCP that receive carer break	10%	20%	40%	60%

Financial Memorandum, tables 9.

As noted above, currently around 3% of unpaid carers access statutory breaks. Combining information in table 9 and 10 in the FM suggests that, by 2034-35, around 10% of the estimated 839,000 unpaid adult carers are expected get a break under the provisions in this Bill.

Table 2: Carers estimated to use right to break from care by 2034.

	20 hrs	20 to 34 hrs	35 to 49 hrs	50+ hrs	Total
Adults with ACSP	143,592	23,712	17,784	100,172	285,260
of which, accessing breaks	10%	20%	40%	60%	n/a
number of carers accessing breaks	14,359	4,742	7,114	60,103	86,318

SPICe calculations based on tables 9 and 10, FM.

In addition to the provisions in the Bill,

“The Scottish Government also intends to maintain a national short breaks fund, using existing powers, to enable easy-access support for people in less intensive caring roles.” ([FM, para 61](#))

The FM assumes that, in addition to around 10% of adult carers accessing short breaks, 14% of adult carer will take up the ‘easy access’ support. That will build up over a shorter period of five years.

The submission from Shared Care referred stated it would be:

“essential to prevent Adult Carer Support Plans and Young Carer Statements being used as a gatekeeping or rationing device to manage resources, as an alternative to eligibility criteria.”

‘Anne’s Law’

Section 40 of the Bill allows Ministers to issue directions.

The [‘Statement of Benefits’](#) for the NCS explains how the Bill would supplement existing guidance by allowing Ministers to issue directions about visiting care homes:

“Current Scottish Government guidance and the strengthened Health and Social Care Standards has promoted and encouraged care homes to increase opportunities for meaningful contact both in and away from the care home

with the adoption of protective measures. The NCS Bill will go further and allow Scottish Ministers to exercise a new power to require care home service providers to comply with Directions issued by the Ministers. This will help ensure that the rights of residents and friends and family are restricted only where justified as necessary and in a way that is proportionate and non-discriminatory and in accordance with human rights law.”

The Policy Memorandum states that:

“The Scottish Government’s policy objective for Anne’s Law (as part of the Bill) is to ensure that providers and public health teams give effect to visiting rights and to remove variation in practice in the sector including the use of blanket visiting bans by care home providers. In practice this will mean visiting will always be supported in line with directions issued by the Scottish Ministers.” ([PM para 215](#))

In evidence to the Health and Social Care Committee, Frank Jarvis (SHRC) said:

“What if the problem is not lack of rights, but that the rights that people already hold have not been respected and protected? [...] The production of legislation, in and of itself, will not necessarily change the situation in which some of the prohibitions on visiting were already breaches of human rights. We need to understand how those breaches were permitted, and why they were neither challenged nor addressed. It is not clear that legislation, in and of itself, can address that problem. It is about mechanisms.” ([Cttee OR col 17](#))

Members may wish to discuss:

- 11. Does the Bill provide a clear right for carers to be provided with “the support that they need to take sufficient breaks”? Do you view this as a demand led entitlement (like social security) or subject to budgets?**
- 12. The Financial Memorandum assumes that 10% of adult carers will access short breaks and an additional 14% will use ‘easy access support’. Is this the scale of demand you expect?**
- 13. How do we ensure that more carers get support plans and statements so that they can access the ‘right to a break’?**
- 14. Section 40 requires care homes to comply with Ministerial directions on visiting. To what extent will this ensure people’s rights are upheld – what more is needed?**

PANEL 2: Social Care Workforce: equalities and social justice issues

The Health Committee heard from COSLA, SOLACE and SOLAR on 1 November. The Local Government and Housing Committee is also considering workforce issues, hearing from UNISON, SOLACE and COSLA on 15 November. The focus in the following is therefore on the potential for the Bill to promote equalities and fair work rather than on the specifics of re-organisation and staff transfer.

The Feeley review recognised that:

“The social care workforce in Scotland is so notably disadvantaged because it is highly gendered.” Feeley Report p.80

The Fairer Scotland assessments describes how the Bill would enable the NCS to support Fair Work by:

“including Fair Work within the guiding Principles of the NCS, thus giving Scottish Ministers the ability to ensure that Fair Work is embedded into the NCS as a founding principle, and to make the NCS an exemplar of Fair Work. The ethical commissioning strategies also need to reflect the Principles, and therefore be a key tool for ensuring Fair Work. This will also support Scottish Ministers to improve the way in which Fair Work is identified and considered as part of commissioning and procurement practices.” ([Fairer Scotland p.6](#))

People working in social care make up around 8% of the entire Scottish workforce. The Policy Memorandum describes the potential for social care reform to impact on society more broadly

“Progressing Fair Work across social care, including increasing pay, would not only help social care staff but will also positively impact on wider Scottish Government priorities on child poverty, Fair Work and post-Covid pandemic recovery.” (PM para 107)

The submission from Volunteer Scotland argues that the Bill does not take account of the role of volunteers or the voluntary sector saying:

“It is vital that volunteers are explicitly referenced in the Bill when detailing arrangements for workforce planning and development.”

[...]

“40% of the 12,008 voluntary organisations whose primary area of work is social care are community groups who will likely be largely or wholly operated by volunteers”

Theme 5: Principle of co-design and workforce representation

One of the statutory principles is:

“services provided by the National Care Service are to be designed collaboratively with the people to whom they are provided and their carers” (section 1(d)).

[Social Work Scotland](#) consider that the co-design process should precede the Bill. In addition they propose that the principle on co-design should be amended to reflect that services are to be designed collaboratively with the people to whom they are provided, their carers, and those who work in the services at all levels.

Volunteer Scotland notes that: “many third sector organisations in the care sector are likely to have volunteers with lived experience,”

Care Board membership is another important aspect of establishing which interests shape the National Care Service. Care Boards can include members ‘representative of certain interest’. The detail will be in regulations, which can also set out the qualifications and experience that are required.

The [GMB](#) proposes that:

“A minimum of four trade union positions on Care Boards and Special Care Boards must be enshrined within the Bill.”

Members may wish to discuss:

- 15. How has the workforce (including volunteers) been involved in developing proposals for the NCS?**
- 16. What would be the impact of not including specific mention of the workforce in principle 1(d)? (services to be designed collaboratively)**
- 17. The Bill does not set out which representative interests will be included on Care Boards. Can this be left to regulations? If not, why not?**
- 18. How can the Scottish Government ensure that the process of change isn't destabilising for care users, their carers and the workforce? To what extent could a well designed co-design process reduce this risk?**

THEME 6: Principle of Fair Work

Another of the statutory principles is fair work:

“the National Care Service is to be an exemplar in its approach to fair work for the people who work for it and on its behalf, ensuring that they are recognised and valued for the critically important work that they do” (section 1(g)).

The Policy Memorandum notes that:

“The NCS Bill will have a positive impact on low income staff in the sector by enabling Scottish Ministers to ensure that Fair Work is embedded into the NCS as a founding principle.” ([PM para 255](#))

It describes how Fair Work will be promoted by the NCS:

“The Bill proposes to enable the NCS to support Fair Work in the sector, by including Fair Work within the guiding principles of the NCS (section 1 of the Bill), establishing the NCS as an exemplar of Fair Work. The NCS ethical commissioning strategies also need to reflect the NCS principles, and will therefore be a key tool for ensuring Fair Work is embedded in the way services are planned and provided.” (PM para 106)

The GMB state that the principles need to be “far stronger so that there is no ambiguity that improving the pay, terms and conditions of the workforce and to make work better are fundamental tenets and realistic aims.”

They propose various amendments to strengthen Bill’s provisions on Fair Work. For example,

- The principles of the NCS included in the Bill must therefore be Replace section 1(g) with: “the National Care Service will ensure that the social care workforce across all sectors will be valued, recognised and respected for the work they do; and empower them within the Service to represent their own interests directly.
- New regulatory body must be enshrined within the Bill which will be responsible for ensuring all care providers are adhering to standards, conditions of their contracts and obligations on employment rights
- A tri-partite structure which includes trade unions, employers and the Scottish Government to negotiate minimums on pay, terms and conditions must be enshrined in the Bill.

Members may wish to discuss:

19. Ethical commissioning strategies must reflect the principles, including that of fair work. To what extent will this ensure fair work is embedded in the National Care Service?

20. How should ‘fair work’ be applied to volunteers?

21. GMB suggest various amendments to ensure care workers are “valued respected and empowered”. Currently the Bill leaves much to regulations and policy. What is the likely impact on ‘fair work’ of this ‘framework’ approach?

THEME 7: Impact on equality and poverty

The Fairer Scotland Assessment suggests wider societal benefits from these reforms. For example, in relation to the rights to breaks from caring it states:

“Protecting carer health and wellbeing should also lead to wider benefits to the Scottish economy by enabling more carers to remain economically active, reducing the gender pay gap and social security costs.” (Fairer Scotland p.30)

The Financial Memorandum discusses economic benefits of establishing the NCS saying it could have:

“benefits for people and for Scotland’s wider society and economy through improved community health and social care support for people who need it and their families, with people being able to access services when they are needed. It is also expected to lead to improved experiences for those who work in social services through strengthening fair work in the sector and improved support and recognition for social work and social care. This will help with workforce retention and recruitment.” ([FM para 18](#))

Noting that most social care jobs are done by women, the FM notes that:

“Investment in social care can therefore help to reduce the gender pay gap. The large reach of the sector also has an important contribution to make to tackling inequalities, including child poverty, and meeting Scotland’s climate change and sustainability goals through more efficient use of estates, travel, and waste.” (FM para 20)

Members may wish to discuss:

- 22. Given the scale of the social care in terms of care users, carers and workforce to what extent will these reforms impact on equalities throughout society?**
- 23. Is anything additional needed in the Bill to maximise that impact?**

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SPICe
4 November 2022