

Criminal Justice Committee

33rd Meeting, 2022 (Session 6), Wednesday, 21
December 2022

National Care Service (Scotland) Bill

Note by the clerk

Background

1. The [National Care Service \(Scotland\) Bill](#) (the Bill) was introduced into the Parliament on 20 June 2022. Its purpose is to allow the Scottish Ministers to transfer social care responsibility from local authorities to a new, national service. This could include adult and children's services, as well as areas such as justice social work. Scottish Ministers will also be able to transfer healthcare functions from the NHS to the National Care Service.
2. The Health, Social Care and Sport Committee has been appointed as the lead committee for the consideration of the Bill. Owing to the breadth of the policy areas the Bill touches upon however, the Parliament has appointed four other committees¹ to act as secondary committees to consider various parts of the Bill and report their conclusions and recommendations back to the lead committee for its consideration.
3. The Criminal Justice Committee is a secondary committee for the consideration of the provisions of the Bill which relate to the justice sector, such as justice social work. This Bill contains a power (s27 of the Bill) whereby the Scottish Ministers may by regulations, wholly or partly, transfer to themselves or a care board a function conferred on a local authority by an enactment mentioned in schedule 3 of the Bill.
4. In relation to criminal justice, the Bill contains a provision in s30 whereby Ministers are required to consult first on any proposals to bring children's and justice services into the National Care Service; **see Annex A**.

Evidence received

5. At its meeting on 23 November 2022 the Committee took [oral evidence](#) from Anil Gupta of COSLA, Kate Ramsden of UNISON Scotland and Lynsey Smith of Social Work Scotland.

¹ The other secondary subject committees are the Local Government, Housing and Planning Committee; the Education, Children and Young People Committee, and the Social Justice and Social Security Committee.

6. Also, written submissions were made to the lead committee from [COSLA](#), [UNISON Scotland](#) and [Social Work Scotland](#), all of which make reference to the provisions of the Bill relating to the justice sector. Committee [paper](#) [CJ/S6/22/29/4](#) from the meeting of 23 November also contains additional briefing material from the Scottish Government on a summary of programme of work to support decisions on justice social work.

Today's meeting

7. Following the oral evidence session on 23 November, the Committee agreed to hold an oral evidence session with Kevin Stewart MSP, Minister for Mental Wellbeing and Social Care.
8. The Committee was also due to take oral evidence from Aberdeen City Health and Social Care Partnership on 23 November, but their representative could not attend. They subsequently made an additional written submission to the Committee, based on questions Members put to the other witnesses during the oral evidence session on 23 November. This submission is attached at **Annex B** for information.

**Clerks to the Committee
December 2022**

Duties in relation to transferring functions

- 10 **30 Consultation before bringing children’s and justice services into the National Care Service**
- (1) This section applies in relation to regulations under section 27 that would transfer the function of providing—
- 15 (a) a children’s service, or
- (b) a justice service.
- (2) Before making regulations to which this section applies, the Scottish Ministers must consult publicly about the function transfer that the proposed regulations would effect.
- (3) When laying a draft Scottish statutory instrument containing regulations to which this section applies before the Scottish Parliament for approval by resolution, the Scottish Ministers must also lay before the Parliament a summary of—
- 20 (a) the process by which they consulted in relation to the function transfer that would be effected by the regulations contained in the draft instrument, and
- (b) the responses they received to that consultation.
- (4) In this section, “a children’s service” means a service that is provided to, or in relation to (either or both)—
- 25 (a) persons under 18 years of age,
- (b) persons 18 years of age or over on account of a local authority having provided a service to, or in relation to, them when they were under 18 years of age.
- (5) In this section, the reference to “a justice service” is to be construed as follows—
- 30 (a) a justice service is a service that is provided only to, or in relation to, persons who are or have been—
- (i) in police custody having been arrested in respect of an offence,
- (ii) officially accused of committing an offence,
- (iii) the accused in criminal proceedings,
- 35 (iv) found guilty in criminal proceedings,
- (b) despite paragraph (a), no service provided in exercise of a function conferred by virtue of the Mental Health (Care and Treatment) (Scotland) Act 2003 is a justice service.

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*Part 1—The National Care Service**Chapter 6—Allocation of care functions etc.*

- (6) In subsection (5), “officially accused” and “police custody” have the meanings given in (respectively) sections 63 and 64 of the Criminal Justice (Scotland) Act 2016.

ANNEX B

Submission from Claire Wilson, Chief Social Worker, Aberdeen City Health & Social Care Partnership

Based on questions put to witnesses during the oral evidence session on 23 November 2022.

Q1 General views of possibly of justice service being included in the NCS. How might this effect justice social work and the services being provided and how might you see these changing?

This question is difficult to answer given this is a framework Bill, so it is impossible to fully comprehend the implications of this for justice without the detail or indeed with the absence of a full review of justice services.

There is always a need to reform, it gives opportunities to adapt and improve, however justice, as you know works within a very complex national and local context in terms of the legislation, strategies, and priorities. With the absence of a review of justice social work, and the evidence from this, it is impossible to determine both the positive and negative impact of moving it into the NCS, however, what we can do is look at what the evidence of the here and now is and how we can use this to influence what is required moving forward.

The focus of the Feely report is on social care and the findings of this are obviously based around what is required to improve care services. The report did not consider the wider statutory functions of social work in relation to public protection, nor did it take into account the landscape it currently works within. From a misguided notion of keeping 'social work' together, other elements of social work appear to have been bolted on without fully comprehending the complexity of this and the impact it has thereafter.

For justice social work we have seen considerable change within a short space of time. From the creation of Integrated Joint Boards from the Public Bodies (Joint Working) Scotland Act 2014, we saw a clear lack of consideration of justice services at that time which resulted in many local authorities struggling with what to do with Justice and where it best fitted. This of course is what we currently see with the responsibility of justice sitting either within local authorities or within IJB's. From the small number of recent inspections of justice services, there was no evidence that one arrangement was more effective than the other which concludes to me that it is leadership and not structure that is the most important. Having a clear vision, ownership, strong and effective leadership and governance are by far the key factors. That said, the devolvement of Community Justice Authorities, undoubtedly had an impact on justice services and it took a considerable length of time to determine what the governance arrangements both within local authorities and IJB's needed to be and I'm not sure every local authority has this right. It could be argued that the current arrangements do not give the consistency required but there is no evidence that the NCS will do this either. It can be seen that a within local authorities, public protection is a key focus and we have strived hard in Aberdeen to create collaborative and robust arrangements in both public protection and community justice. There is a fear that these arrangements could be lost.

In terms of Community Justice, we can see that there is differing models across Scotland and how this is implemented. Although Community Justice Scotland gave a national framework, I would say that the interpretation and implementation of this differs across the country. In Aberdeen, we see the importance of community infrastructure and that is why we embedded our Community Justice Plan within the Community Planning Partnerships- local outcome improvement plan. The core principle for Community Planning is early intervention and prevention and you will see this very much at the heart of our LOIP stretch outcomes. This is our local strategy of how we deliver and improve our services as public, private and third sector partners to which collaboration and joint ownership is key. Although there will always be a need for differences across areas, it's the implementation of strategy that gives consistency.

Whatever structure is in place for justice, the service will continue to work as it always has and no change is envisaged on the ground. One major risk for justice, however, comes from the financial arrangements with the current ring-fenced budget and it is important this remains in place. One of the other key risks for me is that bureaucracy can often stifle innovation, we lose local flexible arrangements based on local need and that the priority to address the social care crises consumes local delivery boards to the detriment of justice services. We have made considerable progress across our services and in Justice Social Work which is detailed in our recent inspection report, I would not like for our progress to be hindered by this change. Costly and complex rearrangement of services will take many years to complete with the risk that justice and other areas of social work will be negatively impacted.

Q2 In terms of consultation, what should this look like, and priorities for justice?

As this is an enabling Bill, the work hereafter is the most important. I welcome the consultation and the opportunity to really consider what the future of justice looks like. The consultation requires to consider what is working well now and what improvements can be made. It needs to gather the voices of professionals, stakeholders, and those with lived experience in the justice system. A lot of research and review is therefore required to consider how justice would fit within a NCS or not as the case may be. There also requires to be consideration as to the future of community justice as I would see that the NCS would have to become a partner around the table and of course consider what the role of Community Justice Scotland is moving forward.

Q3 What more can be done in future stages that people who work in the service and use the service have their say?

I have been engaging with front line justice staff in Aberdeen about this, but they don't have the detail of what the changes will mean for them and the service they currently deliver. Some staff on the ground feel they haven't fitted in to the Health and Social Care integrated model and fear they will be further marginalised. They are clear though that it is important to maintain and promote the integrity of the social work profession and to do so we need to stand united. We are bound by a core set

of principles, standards, guidance, and legislation and these should not be diluted. Justice has functioned on a welfare model since its inception in 1968 and it's important that we continue to deliver person centred practice. The concern is that national frameworks, constant scrutiny and the increasing ask for assurance in action plans and data may result in the protective roles of social work and relational based practice being lost.

It is therefore vital that the consultation and co-design is done not to them but by those who work and use the service.

Q4 View that the inclusion of sectors is overreach and would you agree?

Yes, I agree with this. As advised Feely focused on social care and not wider social work functions. Whilst I agree with all the principles of the Feely report and the recommendations for social care, the report did not contain the focus of wider social work services and Feely did advise there was a need to review social work services in the context of the recommendations about a national care service. It appears that rather than doing this, Scottish Government added in the other services without fully comprehending what this would mean and how complex it would be.

Q5 Our understanding is that the NCS will be a commissioning body and commission services that are required to deliver care. What is the main reason why the status quo can't continue?

The key point here is how the implementation of the NCS is delivered by the local care boards and how they are governed. As advised, there must be flexibility on a local level to meet needs and respond to demand. At the moment, IJB's through local authority commission services to provide some of our services but many tasks are still delivered by social work staff. Justice social work already has commissioning arrangements in place so I don't think this will change if justice joins NCS and hope would be that justice social work retains responsibility for statutory functions supported by third sector.

Q6 LA have statutory duties, is there a risk of privatization? Is this a risk and what representations will you be making to Scottish Government?

We don't know what the outcome will be at this stage. It is hoped that justice social work will continue to be delivered by social work and supported by commissioned services. The NCS will require to become a partner of both community justice and community planning as the IJB currently is to continue with local arrangements and priorities. What is required however, is strong social work leadership with ownership, accountability, and responsibility of statutory social work functions. To do this it is vital that there are social work directors, Chief social work officers and senior social work managers to oversee service delivery at a local level

We will continue to make the arguments as laid out in our consultation response and the concerns highlighted within this conversation

Q7 Would it be better to address the issues within the system before introducing a new level of management?

There is an argument to do this, yes, but that may be more problematic due to how justice is currently split between IJB's and LA's and the role of Community Justice Scotland. What would be beneficial is to pause the Bill in terms of justice to enable a review of the current system, co-design a new one and then a careful transition over to the NCS once the social care part is set up and arrangements in place.

Q8 Would it be a preference that the Bill is paused to consult, scrap it completely or take justice out and let it proceed without it?

We need to be mindful of the complexities within the Bill. My view is that social care needs to proceed as per the recommendations in the Feely report. I do however feel it is important that social work has to remain together. My ask would be is that there is time for a more considered and outcome focused approach to NCS development with regards to justice; allowing time for a justice service reform to be properly reviewed, evidence-based decisions and a clear transition plan thereafter for justice services. So, pause the Justice part

Q9 Justice social work was not consulted in this Bill, do we know why Scottish Government didn't listen and do you have confidence they now will?

We are being engaged now around the research being carried out. As we are at the start of this, it is difficult to answer this question, but Scottish Government need to consider the impact of suggestions for the whole of social work statutory duties and not just delivery of social care. They do need to consider this now and listen to the concerns raised but I don't think the answer is to pause the whole Bill. They just need to take time to get it right.

Q10 If more consultation was offered, would it allay some of your concerns?

Yes, this would allow people to really consider what this could look like, understand the impact and be part of the process of change.

Q11 What key questions would you ask the minister for Mental Wellbeing and Social Care?

Where is the evidence that justice sitting in within the NCS would give any improvements? Can you guarantee that the ring fence funding would continue to protect justice against the social care crises?

We have seen a lack of integration at a government level, what assurances can you give that this will be any different with the NCS?