

# What does the National Care Service mean for Local Government?

## What is the National Care Service?

[The National Care Service \(Scotland\) Bill](#) was introduced by the Scottish Government in June 2022 with the intention of reforming how social care, social work and community health services are delivered in Scotland. It has been described by the Scottish Government as the most significant reform to public services since the creation of the NHS. Currently, the National Care Service is expected to be implemented by 2026.

The proposal to create a National Care Service was based on recommendations made by the [Independent Review of Adult Social Care](#), led by Derek Feeley. One of the recommendations called for increased national oversight of adult social care in response to challenges that were highlighted during the coronavirus pandemic.

The Bill is referred to as framework legislation because it proposes general principles of the National Care Service but leaves considerable detail to be laid out in future secondary legislation. Scottish Government's intention is to 'co-design' these details alongside people who use and work in social care. However, subject to consultation, the Bill also proposes moving responsibility for children's services, justice social work and mental health services (as well as adult social care) into a National Care Service, all of which will be overseen by Scottish Ministers.

The Scottish Government is proposing that the National Care Service sits as a directorate within their governance structure rather than becoming a stand-alone body. It is still unclear from the Bill how the National Care Service will be governed and who will be represented on local care boards and special care boards.

## What would the National Care Service mean for council staff and councils?

The Bill proposes transferring responsibility for social care, social work and some community health functions - including staff, and assets such as buildings and equipment - from local councils to care boards which will be overseen by Scottish Ministers. As of November 2022, the Scottish Government has not indicated which services or staff they intend to transfer.

The Bill as it stands has a potential destabilising effect on current services, which may impact both service users and staff - causing great uncertainty and exacerbating existing challenges in the delivery of services and in the recruitment and retention of staff. In the [COSLA response](#) to the Health, Social Care and Sport committee's call for views on the Bill, COSLA raised concerns that the proposals may also threaten the sustainability of councils, with the potential loss of a critical mass having a significant effect on the ability to maintain other core statutory local authority functions.

It is estimated that up to 75,000 staff currently employed by councils may be transferred to the National Care Service under the proposals. COSLA has requested information on how this may happen in practice and what impact this may have on staff pay, terms and conditions and pensions. This would be a huge undertaking to deconstruct and navigate a large number of employers, local agreements, and the Local Government Job Evaluation Scheme. Furthermore, while Local Government staff are expected to be transferred to a National Care Service, the Bill specifically states that NHS staff cannot be transferred.

COSLA strongly believes that commissioning powers should be retained within Local Government so that communities can design and direct services as appropriate for their circumstances and context. The Bill proposes that care boards will commission services, including from local authorities, who would therefore have to bid for contracts against the independent and third sectors.

In addition, centralising social care and social work services could impact the ability to deliver a joined-up approach across other essential services such as: education, housing, welfare, employment, leisure, environment, and social support.

In response to these concerns, Council Leaders agreed that COSLA cannot accept the mass transfer of functions, staff, property and liabilities from Local Government to Ministers, and that any move to limit the role of local authorities as commissioners of services would result in a loss of local democratic accountability and local knowledge, and risk creating a more fragmented system.

## What would the **National Care Service** mean for **Integrated Joint Boards**?

A National Care Service as currently proposed would likely see Integrated Joint Boards replaced by care boards, which would take on functions currently managed and run by local authorities and health boards. This and other aspects of the proposals therefore threatens to undo years of progress towards the integration of local health and care services.

Apart from detailing that power will lie with Ministers to appoint and remove care board members and Chief Executives, the Bill does not provide any further detail on the governance, accountability, membership, number or geographical area of these care boards. At present, there seems to be no requirement for Scottish Ministers to consult with local communities on such matters, raising concerns for local democratic accountability. There is also no clarity on how this affects health budgets or how they will be treated and transferred to support the National Care Service and care boards.

# How has COSLA responded to the National Care Service proposals?

COSLA provided a written response to the [National Care Service consultation](#) in November 2021 outlining major concerns with the proposals. There was no meaningful engagement between the Scottish Government and Local Government between that time and the publication of the National Care Service Bill in June 2022. The Bill was shared with COSLA on the day that it was laid before Parliament (1 day before it was published).

COSLA provided a [written response](#) in September 2022 to the Health, Social Care and Sports Committee's Calls for Views on the Bill. Whilst recognising a National Care Service in some form could provide national leadership on several matters such as: workforce planning, training, terms and conditions, national standards, ethical procurement, registration, inspection, and improvement; COSLA has asked for the Bill to be amended to ensure local authorities remain central in the provision of local services. Key points made by COSLA in our response to the Call for Views include:



## We should make improvements now, not wait for structural change

Scottish local government has been working on the key areas identified in the jointly agreed [COSLA/ Scottish Government Statement of Intent](#). This includes a focus on securing a Real Living Wage for all care workers; developing minimum standards; terms and conditions; improving the workforce voice; working to remove charging for non-residential care services; applying ethical commissioning principles; designing new criteria for and entitlements based model of care; improving the voice of lived experience in care services; and improving the support to unpaid carers.



## The National Care Service Bill fails to tackle the issue of underfunding

The financial memorandum significantly underestimates the costs of National Care Service as proposed and does not include existing policy commitments. COSLA estimates the total cost of implementing the Feeley recommendations at over £1.5 billion - a figure which does not take into account children's services, justice social work or mental health services. The establishment of the NCS national body alone will cost up to £250 million with overall NCS running costs of up to £500 million per year; this could be spent on improving service delivery and meeting current unmet need.



## Communities benefit when services are locally delivered & locally accountable

Local democratic accountability is essential to ensuring local needs and circumstances are reflected in the care and support that is available. Diversity and difference are positive features of democracy. What works for someone living in a large urban area often differs from someone who lives in a rural or remote area.



## This Bill would have a severe impact on councils, our staff and our communities

The Scottish Government have not undertaken a Local Government impact assessment which should have taken place before legislation was laid.

The provision to transfer staff out of Local Government has already caused uncertainty within the Local Government workforce, at a time where many staff are still recovering from the difficulties faced during the pandemic and where recruitment and retention challenges already exist.

The complete removal of this critical mass of council staff and assets will disrupt the entire financial structure of local authorities, their support services and may even have an impact on the viability of some councils' ability to perform necessary statutory functions and responsibilities.



## Any reform needs proper consideration and scrutiny

The Bill goes far beyond the recommendations outlined in the Feeley review which focused solely on adult social care, whereas the Bill aims to include children's services, justice social work and mental health services.

The Bill relies heavily on secondary legislation (such as regulations), which weakens effective parliamentary scrutiny for future decision-making. The Scottish Government have not yet published a Programme Business Case which is expected in early 2023 – towards the end of Stage 1.

**The Bill as introduced does not recognise the possibilities of improvement within current local governance arrangements nor evidence of improvement and integration over many years.**



COSLA Leaders agreed in September 2022 that COSLA officers will only engage in the governance and co-design work related to the National Care Service in areas agreed by Leaders, and on the basis that **agreement is reached by Ministers to amend the Bill such that the power to transfer staff, functions, assets and properties is removed**. COSLA's Health and Social Care Spokesperson outlined this mandate to the Minister for Mental Wellbeing and Social Care in October 2022.

COSLA Leaders have also recognised that there are specific provisions in the Bill which do not directly relate to co-design and would progress regardless of where accountability for care lies. Engagement in the following workstreams will continue: Right to Breaks for carers; Anne's Law; single health and care record; Charter of Rights; research into children's services reform; and research into justice services reform.

COSLA has been invited to give oral evidence to several parliamentary committees which began scrutiny of the Bill on 25 October 2022. The Committees which heard evidence were: [Health, Sport and Social Care Committee](#), [Education, Children and Young People Committee](#), [Finance and Public Administration Committee](#), [Local Government, Housing and Planning Committee](#) and [Criminal Justice Committee](#). These initial sessions are due to run until at least mid-November. Parliament has agreed that Stage 1 scrutiny of the Bill will be completed by 17 March 2023 and will only progress to Stage 2 scrutiny if the general principles of the Bill are agreed. Dates are yet to be set for the lead committees Stage 1 report or when the Stage 1 debate will take place. At the debate MSPs will vote to either pass or reject the Bill.

If the general principles are agreed, Stage 2 scrutiny will be led by the Health, Social Care and Sport committee. Any amendments proposed at this stage will be debated by the committee, with MSPs who sit on the committee suggesting amendments. It will be at the discretion of committee members to either pass or reject these amendments. The current Scottish Government National Care Service Roadmap suggests that stage 3 will be completed by summer 2023.



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