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February
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Update on *The National Care Service (Scotland) Bill*

The Bill was introduced on 20 June 2022 and is now in Stage Two in the Scottish Parliamentary process. How did we get here, and what might it mean for health and social care transformation?

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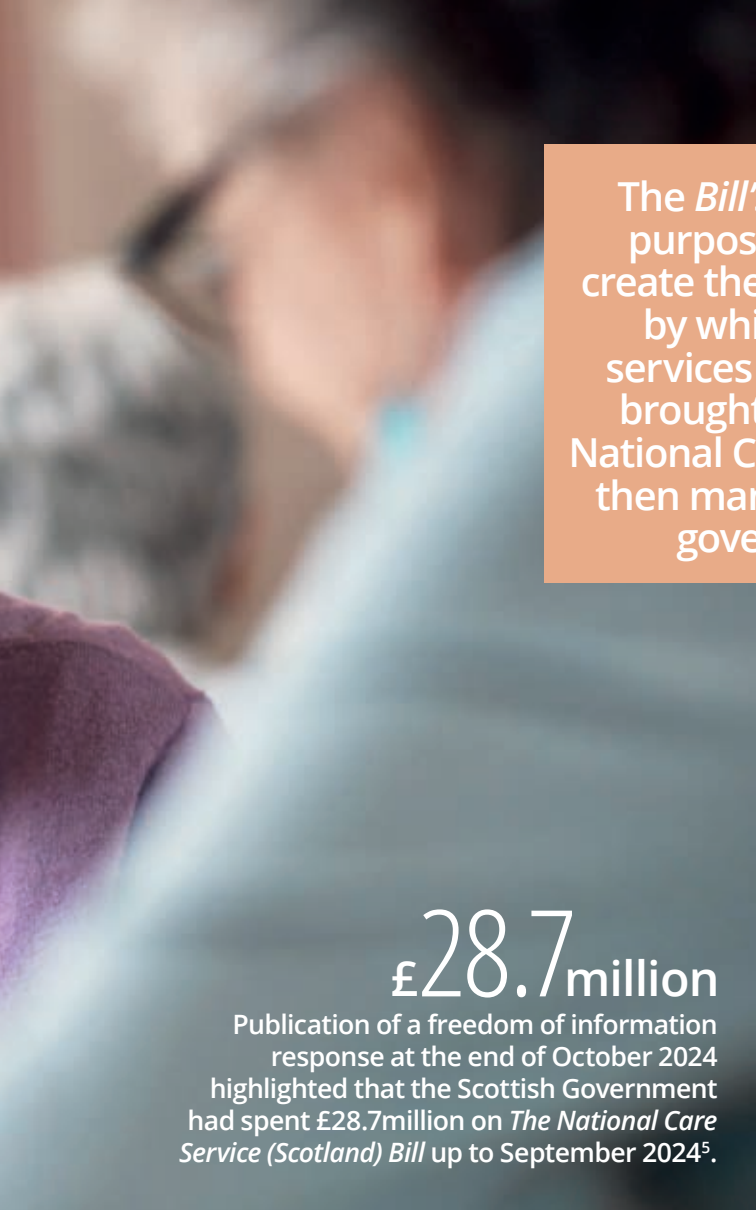
The National Care Service (Scotland) Bill (*the Bill*) is framework legislation to enable: 'the most significant reform to public services since the creation of the NHS' according to the Scottish Government. It has had a tempestuous parliamentary journey, closely watched by leaders in local government and health. Engagements between key parties will shape future relationships between key stakeholders.

Background to the Bill

This journey arguably began with the *Public Bodies (Joint Working) (Scotland) Act 2014*¹ (the Act) which created Integration Authorities to support people in their own homes and communities, and to reduce hospital admissions. The Act required health boards and local authorities to work together effectively to agree a

model of integration to deliver quality, sustainable care services. In all but one local government area, health boards and local authorities established Integration Joint Boards (IJBs). These were separate from the local authority and the NHS Trust. Each IJB created a statutory strategic plan for governance, planning and resourcing of health and social care services, and commissioned those services. Statutory responsibility for services remained with, and the workforce remained employed by, either the local authority or the NHS Trust.

Laying foundations for further integration, in February 2021, the Independent Review of Adult Social Care² (IRASC) recommended a National Care Service (NCS) to overcome any 'postcode lottery' of service provision and to simplify governance, facilitate strategic collaboration and leadership, and move from a reactive



The *Bill's* original purpose was to create the processes by which care services would be brought into the National Care Service, then managed and governed.

£28.7million

Publication of a freedom of information response at the end of October 2024 highlighted that the Scottish Government had spent £28.7million on *The National Care Service (Scotland) Bill* up to September 2024⁵.

service towards crisis prevention. The preceding review of children's services made no such recommendation. When the Scottish Government commenced consultation on the *Bill* in August 2021, the Convention of Scottish Local Authorities (COSLA) expressed disappointment that the potential inclusion of children's services and justice services was an unexpected deviation from the recommendations in the IRASC.

Introduction of the *Bill*

The *Bill* was introduced on 20 June 2022, to create the processes by which care services would be brought into the NCS, then managed and governed. The *Bill* did not specify what those services would be or how such services would be delivered. This is to be dealt with by future secondary legislation.

Under this legislation as introduced, care boards could be established. The *Bill* would create the system to establish these but does not specify what they would do. Scottish Ministers would appoint board members and chairs, transfer services chosen by Scottish Ministers from a statutory list from local government or the NHS to these boards, approve their strategic plans and potentially direct their actions. Scottish Ministers could split services, with certain

functions transferred to a care board and others left with the statutory service provider. The legislation would allow for the transfer of property and liabilities to a new function holder. Local government staff (but not NHS Trust or third sector staff) could be transferred into direct employment of care boards.

Early concerns were widely expressed, for example around uncertainty on which services would be brought into the NCS, along with the legal responsibility for services, staff, premises, and data. Amid ongoing issues with recruitment and retention of care staff, some sessions of the leading Health, Social Care and Sport Committee heard questions relating to the use of framework legislation, with much to be determined in less scrutinised secondary legislation. The Finance and Public Administration Committee also rejected the first Financial Memorandum, primarily due to lack of clarity over the potential cost of the NCS³.

The *Bill's* progression

While Stage One was extended past its original end date of March 2023, in the summer of 2023 the Scottish Government and COSLA entered into a partnership agreement, known as the Verity House agreement. This set out their: 'vision for a more collaborative approach to delivering our shared priorities for the people of Scotland'⁴.

By Autumn 2023, the Scottish Government had stated an intention to move away from some key features of the original *Bill*, towards a model which retained IJBs, albeit reformed. A National Care Service Board would address the setting of national standards, taking a key role in the formation of strategic plans and the review of performance.

Draft amendments to the *Bill* to achieve this were not available by the Stage One debate on 29 February 2024, but with a plan to provide these at Stage Two, the Scottish

National Party (SNP) and the Scottish Greens, (at that time in a power sharing agreement) voted in favour of the general principles of the *Bill*. The motion was passed with 65 votes for, and 51 against.

There remained a strong public perception that action was needed to improve social care provision, and to address the issues of recruiting and retaining professional care staff, and support unpaid carers in society.

The *Public Bodies (Joint Working) (Scotland) Act 2014*¹ required health boards and local authorities to work together effectively to agree a model of integration to deliver quality, sustainable care services.

express concern that the draft revised legislative approach outlined by Scottish Government does not effectively represent a clear model of shared accountability”⁶.

In light of this, the COSLA response stated that: “... It had been our hope and expectation that the National Care Service would be delivered in a way which

maximised the benefits of enhanced national strategic direction, whilst ensuring a continued role for local communities to best plan services to meet local needs. Regrettably, Scottish Government’s draft amendments (and policy intent in several key areas) have the cumulative effect of eroding local decision-making and the role of local government within social services.”⁶

In early October 2024, the Scottish Trades Union Congress (STUC) withdrew support, expressing concern that low pay and insecure conditions were ‘rampant’ throughout the social care sector, amid a continuing

Withdrawing support for the *Bill*

In June 2024, the Scottish Government made their draft amendments available ahead of setting a Stage Two timetable. From that point, the *Bill* lost crucial support.

In September 2024, while re-affirming commitment to seeking national improvement in social care, the COSLA responded to the call for views on proposed government amendments, stating that: “Council Leaders

An England and Wales snapshot: Labour’s progress on a National Care Service

On 30 October 2024 Rachel Reeves announced at least £600million of new grant funding to support social care. On 3 January 2025 the Government reaffirmed its commitment to create a national care service underpinned by national standards, starting with an independent commission led by Baroness Louise Casey of Blackstock.

The independent commission into adult social care will be split over two phases. Phase 1 to 2026, will set clear ambitions for adult social care, concluding with recommendations and delivery timelines. Phase 2 to 2028, will set out longer-term ambitions and recommendations towards transforming adult social care, building on the findings and

recommendations from Phase 1.

This commission will seek cross-party support to achieve deliverable measures on how to respond to the demands associated with an ageing population, and develop the best framework for building a sustainable national care service.

The January announcement also set out sector reforms and further funding to improve adult social care, including:

- An £86 million boost to the Disabled Facilities Grant for this financial year - on top of the £86 million announced for the next financial year.
- A greater use of technology, with new national standards for care technology.
- Cutting red tape.

■ Improved career pathways and national career structure for care workers.

■ Care workers to be better supported to further deliver health interventions.

■ Developing a shared digital platform for medical information.

■ A shift from sickness to prevention, focusing on community care.

Also, the Government will publish a new policy framework for the Better Care Fund in 2025 to 2026. The new framework will focus £9 billion of NHS and local government funding to move care from hospital to the community, and from sickness to prevention. It will hold local leaders accountable for improving care.



recruitment and retention crisis. It confirmed that support could not be given to a Bill “which fails to address fundamental issues about how social care is delivered”⁷. The STUC instead considered that investment in the sector could be achieved without systemic change.

Probably the greatest set back came in the form of the withdrawal of support by the Scottish Greens in October 2024, after the termination of their power sharing agreement with the SNP. This followed Cllr Anthony Carroll stating: “Councillors across the country are deeply concerned that the National Care Service as proposed will take away local accountability of social care and leave it in the hands of Scottish Ministers ...we must still strive for a National Care Service worthy of that name that puts people over profit and respects local democracy, which this Bill flies in the face of”⁸.

At Stage One, six Scottish Greens MSPs voted for the Bill to progress. Loss of that support increased prospects of a Stage Two defeat.

On 13 November 2024, Maree Todd MSP, the Minister for Social Care, Mental Wellbeing and Sport, wrote to the lead Committee. She stated that the Scottish Government wished to take the time to carefully consider the views of the committee, the public and political parties, and to fully reflect those in the approach to Stage Two.⁹ A new timetable for Stage Two was due to be set in January 2025.

This leaves status of the draft amendments published in June 2024 unclear. Also unclear is whether the legislative process which began in June 2022 will complete during the current Parliamentary session.

The proposed legislation considered in any revised Stage Two timetable is highly unlikely to resemble the *Bill* as introduced and debated at Stage One.

The proposed legislation considered in any revised Stage Two timetable is highly unlikely to resemble the Bill as introduced and debated at Stage One. The Scottish Government can be expected to propose further and potentially far reaching amendments, which local government observers will be hoping will reflect the collaborative ethos of the Verity House agreement. ●

References

¹Public Bodies (Joint Working) (Scotland) Act 2014,

Legislation.gov.uk

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⁴Verity House Agreement and New Deal with Local Government

⁵Pressure on Scottish Government to drop ‘botched’ plans for National Care Service, Holyrood.com

⁶COSLA response to the call for views on proposed Government amendments, The Scottish Parliament

⁷STUC withdraws support for National Care Service, stuc.org.uk

⁸Scottish Greens remove support for National Care Service Bill, greens.scot

⁹Letter from Maree Todd MSP to HSCS Committee concerning Stage 2 of the National Care Service (Scotland) Bill, The Scottish Parliament

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