



Meeting: Board Meeting

Meeting date: 24 September 2024

Title: National Care Service Bill Amendments
Consultation Response

Responsible Executive/Non-Executive: Gareth Adkins, Director of People & Culture

Report Author: Ruth Daly, Board Secretary

1 Purpose

This is presented to the Board for:

- Awareness

This report relates to a:

- Emerging issue
- Government policy/directive
- Legal requirement

This report will align to the following NHSScotland quality ambition(s):

N/A

This report relates to the following Strategic Outcome(s)

Start Well	Thrive Well	Stay Well	Anchor Well		
Grow Well	Listen Well	Nurture Well	Plan Well		
Care Well	Live Well	Respond Well	Treat Well		
Journey Well	Age Well	End Well	Value Well		
Perform well	Progress well				

2 Report summary

2.1 Situation

A report was presented to the last meeting of the Board outlining the details of the National Care Service Bill Stage 2 amendment. It was noted that the amendments sought to introduce a single model of integration and that further updates would be brought to the Board on the legal, financial and governance implications.

It was reported in July that Scottish Parliament had initiated a consultation on the Stage 2 Bill amendments and that the date for responses had been extended to 20 September 2024.

Since this time the Board has considered both the Bill amendments and the areas on which Scottish Parliament have sought feedback through its consultation exercise. Board members have contributed their views which have informed the terms of NHS Highland's final response. This report provides the Board with the terms of the final written response which has now been submitted on behalf of NHS Highland.

2.2 Background

The National Care Service (Scotland) Bill (NCS) was published in June 2022 with the intention of reforming how social care, social work and community health services are delivered in Scotland.

The Minister for Social Care, Mental Wellbeing and Sport shared the Stage 2 NCS Bill pack with parliament in June and Stage 2 amendments were published on 24th June 2024. These will be submitted to Parliament by the Scottish Government in the Autumn.

One of the elements of interest to Highland is the model of integration envisaged by the new NCS. The Stage 2 amendments remove options for integration models and replace them with the introduction of National Care Service Local Boards throughout Scotland. This will be a reform of the existing Integration Joint Board model and remove the lead agency model option.

Under the shared accountability agreement, local authorities and health boards will remain legally responsible for delivery of functions, staff and assets within the NCS. These elements have been subject to widespread consultation including significant engagement with COSLA where agreement on the extent of the services to be overseen by the NCS has yet to be reached, especially in relation to children's services and justice social work.

2.3 Assessment

NHS Highland's response to the Stage 2 Consultation provides detailed commentary on the amendments highlighting a range of matters and drawing attention to the significant changes in Highland as it moves away from the Lead Agency Model.

The Board’s response includes specific commentary on proposals for both the National Care Board and Local Board structure, as well as proposals for direct funding, and arrangements for monitoring and improvement provisions.

It is recognised that the steps to move away from a Lead Agency model in Highland will present a variety of challenges, however it is believed that a consistent approach across Scotland will outweigh the challenges. The details of the framework Bill’s intentions will only emerge through secondary legislation and the overall benefits and service changes for the public are not yet fully articulated.

The full text of the Board’s response is included as **Appendix 1** to this report which is presented for noting.

2.4 Proposed level of Assurance

This report proposes the following level of assurance:

Substantial	<input type="checkbox"/>	Moderate	<input type="checkbox"/>
Limited	<input type="checkbox"/>	None	<input checked="" type="checkbox"/>

Comment on the level of assurance

This is paper is for awareness

3 Impact Analysis

3.1 Quality/ Patient Care

There are no specific impacts identified at this stage.

3.2 Workforce

There may be changes to employment terms and conditions because of changes to the integration governance model. However, further work will be required to explore options. We will work closely with council leadership to support each other in relation to our individual obligations to work with staff as employers within our separate workforce policies and terms and conditions in managing any change that may be agreed in the future.

For NHS Highland this will include adhering to the principles and practice of partnership working and NHS Highland workforce policies.

3.3 Financial

A change to the model of integration will have significant financial implications that are yet to be worked through

3.4 Risk Assessment/Management

There are a range of potential risks arising from the new arrangements as is the case with any major change of this nature. It is known that there may be implications involving the employment status of staff currently working across the Council and NHS Highland with related cost/financial issues and clearly there will be governance and assurance implications for the partnership as well as possible impacts on service delivery. It is still too early to provide a more detailed assessment, but it is useful that greater clarity is emerging as to the integration model that is to be rolled out across Scotland. A technical

assessment of the key differences between the Lead Agency Model and Integrated Joint Board has been initiated to assist with this analysis, albeit it is expected that the IJB model will also change under the new legislation

3.5 Data Protection

No specific issues identified at this stage, but this will be explored as part of exploring the implications of a change of integration model.

3.6 Equality and Diversity, including health inequalities

No impacts identified at this stage

3.7 Other impacts

Legal – Stage 1 of the Bill was completed on 29 February 2024. The timeline for the Bill to complete all Parliamentary stages and for the legislation to be enacted is not yet known but is anticipated that the new arrangements will not come into force for at least another 18- 24 months, providing time for the legal and other implications to be worked through and reported back to the board.

3.8 Communication, involvement, engagement and consultation

As outlined above extensive engagement is occurring at a national level and we are commencing work with Highland council to identify the implications for each organisation. This will then form the basis for future Communication, involvement, engagement and consultation.

3.9 Route to the Meeting

Board Development sessions on 27 August and 17 September 2024

4 Recommendation

The Board is asked to note

- a) the response submitted on behalf of the Board to the Stage 2 Consultation on the NCS Bill, and
- b) that further updates will come forward to future meetings of the board.

4.1 List of appendices

The following appendices are included with this report:

Appendix 1 – NHS Highland response to Stage 2 Consultation

NCS CONSULTATION - NHS HIGHLAND PROPOSED RESPONSES

1. What is your view of the proposed National Care Service strategy (see proposed new sections 1A to 1E)?

- Strongly support
- Tend to support
- Partly support and partly oppose
- Tend to oppose
- Strongly oppose
- Undecided / no opinion

Please use the space below to expand on your answer (max 3000 characters)

While we are generally in support of having a clear strategy that articulates the purpose, aims and intended outcomes of the NCS, it is unclear what approach to engagement or consultation will take place on the proposed National Care Service strategy. There is a risk that without meaningful national engagement and consultation that links with community engagement and placed based planning principles of health and social care integration the strategy could be perceived as a 'top down' approach that does not consider local needs. This would be at odds with the aspiration for place-based approaches and local representation.

NHS Highland feel that the approach to developing and agreeing the strategy would need to include wide engagement across communities, the third sector as well as public sector bodies. The process should be open and transparent with clear indications of who has been engaged, how their views have been represented and should be demonstrable that views have been taken acknowledged and responded to.

2. What is your view of the proposal to create a National Care Service Board, and the provisions about the role and functions of the Board (see in particular new Chapter 1B of Part 1, and new schedule 2C)?

- Strongly support
- Tend to support
- Partly support and partly oppose
- Tend to oppose
- Strongly oppose

Undecided / no opinion

Please use the space below to expand on your answer (max 3000 characters)

It is difficult for NHS Highland board to form a definitive opinion at this stage. Given the lack of detail available on the constitution of the board including membership.

It will be important to have further detail of the terms of reference, any secondary legislation and statutory guidance it will need to operate within and governance arrangements for the proposed National Care Board, to understand to whom it is accountable, its membership and constitution, and an indication of the range of decisions it will be empowered to take. It is unclear how this will sit within existing accountabilities across several different systems in relation to the following powers:

- Direction to local care boards
- Direct funding
- Emergency powers to transfer services to another provider

This is particularly relevant to the power to direct local care boards which in turn can direct partner bodies if the legislation remains unchanged in the context of retaining the IJB model as basis of the local care boards. NHS Boards already receive direct in relation to the integration arrangements but also receive direction from Scottish Government in relation to health services.

This is a new power within the integration architecture that can be used by members of the NCB which includes Scottish Government and other members. It is not clear how direction received by NHS Boards from the NCB via local care boards will interact with direction straight from Scottish Government.

In addition the NCB will have the option for direct funding. Whilst we recognise this is an area of further discussion as noted in the ministers letter the NHS already receive allocations from Scottish Government for specific purposes. It needs to be clear how direct funding via the NCB would work in this context.

Further detail on the emergency powers described in the NCS bill and how these will relate to the NHS Board Performance Framework would be necessary to understand the scope of these powers.

The case for change and establishing the NCB does not reference evidence that outcomes will be better for people or that this centralised approach to directing service will improve them. In contrast the cost of establishing the NCB may not outweigh the potential benefits.

The National Care Board might not create economies of scale and may introduce duplication and additional costs (e.g. payroll and procurement). There are also concerns that the lead-in time will be insufficient to set up the necessary infrastructure. Centralising services such as procurement and national commissioning will mean a loss of the local input and rural areas may lose their influence and voice within the proposed National Board.

3. What is your view of the proposal to establish National Care Service local boards and to remove other integration models (see in particular Chapter 1A of Part 1, and new schedules 2A and 2B)?

- Strongly support
- Tend to support
- Partly support and partly oppose
- Tend to oppose
- Strongly oppose
- Undecided / no opinion

Please use the space below to expand on your answer (max 3000 characters)

The overall alignment to the national model is welcomed since the experience in Highland of being an outlier has presented several challenges. Removal of the lead agency model will present challenges but will ensure a consistent approach to integration models, however on balance the benefit of alignment outweighs the challenges.

However, moving towards a new Local Care Board is fraught with risk and uncertainty. The details of the framework Bill's intentions will only emerge through secondary legislation and the overall benefits and service changes for the public are not yet fully articulated.

Removal of the lead agency model will require a carefully managed transition plan in Highland which has yet to be finally determined. Implementation of the change to a Local Board could take longer to complete and this may impact on service sustainability. Whilst we tend to support this model NHS Highland is the only board that will be affected by removal of the lead agency model and this is likely to create specific resource to enable this transition. It would be helpful to understand if boards will be provided additional resource proportionate to the impact on their current integration arrangements to assist in this transition.

We are aware that the change to Local Care Boards may be costly. Given the ongoing financial challenges for social care in Scotland, this should be balanced against utilising funding directly in the care systems themselves.

There is an expectation that the NCS will bring consistency across Scotland, and we question how realistic this aim might be. We maintain that flexibility to deliver the most appropriate services across a diverse demographic is the best approach for our communities. Different types of service delivery challenges are encountered between urban, remote, rural and islands locations. The Bill lacks clarity on this aspiration which prevents us from having meaningful consideration of the proposals.

We would like to highlight that the Bill is silent on children's services due to the commitment to reopen dialogue between CoSLA, NHS and Scottish Government in the autumn. The intention to remove the lead agency model does not specify if this is in relation to adults or children's services. The lead agency in Highland does

indeed apply to children's services and if this is removed it will therefore require a remodel of children's services in Highland. Scottish Government therefore needs to be aware of this inconsistency.

It is unclear what the oversight role of an NHS Board would be in relation to a Local Care Board and how this would be performed.

Notwithstanding these comments, the move away from a lead agency model may present opportunities to communicate the benefits of transformation to our communities and staff, once the details are known.

It is currently not clear what selection processes will be used to appoint/recruit a wider voting membership to the Local Care Boards. Furthermore, the role and accountability of these Board members require a clear governance structure and guidance for members to ensure there is clarity on the purpose of widening membership. It is not clear what the interplay would be between this wider membership and the generally accepted principle within integration of community engagement and consultation with stakeholders. It is possible that the intention of widening membership of the boards will never fully represent all stakeholders and would then risk unintentionally excluding stakeholders from voting membership. There needs to be further clarity to ensure that community engagement and stakeholder engagement continues to be an important principle and way of working and the role of members on boards is clear.

Greater clarity on the governance around this would be welcome. Given these comments, it might also be worth considering appointing independent Chairs to Local Boards.

4. What is your view of the proposed new provisions on monitoring and improvement (see new sections 12K and 12L) and on commissioning (see new section 12M)?

Monitoring and improvement

- Strongly support
- Tend to support
- Partly support and partly oppose
- Tend to oppose
- Strongly oppose
- Undecided / no opinion

Please Use The Space Below To Expand On Your Answer (Max 3000 Characters)

We believe there would be merit in considering and maximising the potential of existing monitoring and improvement provisions rather than redesigning them. It would be helpful to understand the required national and local scrutiny and governance for performance monitoring, and what the relationship between the National and Local Boards would be in this regard. We would like to see performance scrutiny over the full suite of reporting duties, not merely for a select few.

It is hoped that external agencies and regulators work with the National and Local Boards, and alongside each other to avoid silo working. It would be helpful if performance reporting could be streamlined across the national bodies and focussed on what is best for our communities. We believe there are several agencies missing which should be included e.g. The Mental Health Commission and the Care Inspectorate.

Performance targets should take into account local needs and there is a risk that national targets could work against place-based approaches.

Commissioning

- Strongly support
- Tend to support
- Partly support and partly oppose
- Tend to oppose
- Strongly oppose
- Undecided / no opinion

NHS Boards are experiencing financial challenges and deficits. It is not clear what the impact of this would be on commissioning. Similarly, national procurement and commissioning models might not fit well for delivery in the remote, rural and islands areas.

Please use the space below to expand on your answer (max 3000 characters)

NO COMMENT

5. What is your view of the proposed new provisions to designate a National Chief Social Work Adviser and for the creation of a National Social Work Agency (see new section 26A)?

- Strongly support
- Tend to support
- Partly support and partly oppose

- Tend to oppose
- Strongly oppose
- Undecided / no opinion

Please use the space below to expand on your answer (max 3000 characters)

NO COMMENT

The Minister's covering letter states:

"We intend to improve local delivery through reform of integration authorities. Integration authorities are existing bodies established under the Public Bodies (Joint Working) (Scotland) Act 2014. Local reform will require some new provisions in this Bill amending the 2014 Act, as well as the exercise of existing powers under that Act."

[Read a marked up version of the Act \(PDF\)](#)

6. What is your view of the proposed amendments to the Public Bodies (Joint Working) (Scotland) Act 2014, as set out in the marked up version of the Act?

- Strongly support
- Tend to support
- Partly support and partly oppose
- Tend to oppose
- Strongly oppose
- Undecided / no opinion

Please use the space below to expand on your answer (max 3000 characters)

NO COMMENT

The Minister's covering letter states:

"There remain a small number of areas where further work is needed to confirm which legislative approach would best deliver the intended changes and strengthen their future practical implementation. Those areas are:

- "Direct funding
- "Inclusion of children's services
- "Inclusion of Justice Social Work
- "Anne's Law

“The intention of this approach is to free up COSLA and local government colleagues from further negotiation on these issues and allow them to focus specifically on the mission to reduce Delayed Discharges in the coming weeks and months.”

7. What is your view of the Scottish Government’s proposed approach to addressing the areas of further work outlined in the Minister’s covering letter?

Direct funding

- Strongly support
- Tend to support
- Partly support and partly oppose
- Tend to oppose
- Strongly oppose
- Undecided / no opinion

We support the approach to further discuss this aspect to provide greater clarity on how the direct funding arrangements are expected to function. We believe it might have been better for funding to be direct to the Local Boards from the National Care Board, rather than from NHS and Local Authority organisations. It is unclear if consideration has been given to Local Boards being funded directly and an explanation of the rationale for maintaining funding through local organisations would have been helpful.

NHS Boards and Local Authorities are currently under financial pressures which will be exacerbated by the proposed changes. The changes will also create additional financial pressures for Scottish Government. The remote, rural and islands challenges experienced in Highland would justify Local Boards within NHS Highland’s geography being funded in the same way as Islands Boards are funded.

Inclusion of children's services

- Strongly support
- Tend to support
- Partly support and partly oppose
- Tend to oppose
- Strongly oppose
- Undecided / no opinion

Children’s services were not reflected in the Feeley report, and it is therefore difficult to understand how children’s services will be part of the National Care Service.

Inclusion of Justice Social Work

- Strongly support
- Tend to support
- Partly support and partly oppose
- Tend to oppose
- Strongly oppose
- Undecided / no opinion

Anne's Law

Anne's Law is a piece of planned Scottish legislation which is intended to strengthen the rights of people living in adult and older people's care homes to see and spend time with the people who are important to them, even in the event of an outbreak of infectious disease.

- Strongly support
- Tend to support
- Partly support and partly oppose
- Tend to oppose
- Strongly oppose
- Undecided / no opinion

Please use the space below to expand on your answer referring to the specific areas of further work that you are commenting on

[We support this planned legislation as we had concerns about the impact on families and carers who were unable to enter care homes during the pandemic.](#)

As part of the package shared with the Committee, the Scottish Government has provided an update on co-design of the NCS Charter and an initial draft of the National Care Service Charter.

8. What is your view of the initial draft of the National Care Service Charter?

- Strongly support
- Tend to support
- Partly support and partly oppose
- Tend to oppose

Strongly oppose

Undecided / no opinion

Please use the space below to expand on your answer (max 3000 characters)

It is currently difficult to form a view on the proposed Charter as there are insufficient details included in the draft version. A gap analysis with current responsibilities would have been helpful. Also, a Plain English approach would be welcome to enable the Charter to be meaningful to our communities. More detail is required in the advocacy section relating to rights and responsibilities and it is unclear from the draft what the complaints process would be and whether there would be oversight from the Ombudsman.

9. Do you have any other comments on the Scottish Government's proposed draft Stage 2 amendments to the National Care Service Bill?

Please use the space below to provide your answer

NO COMMENTS