

REPORT TO: HEALTH AND SOCIAL CARE INTEGRATION JOINT BOARD –
24 AUGUST 2022

REPORT ON: NATIONAL CARE SERVICE (SCOTLAND) BILL

REPORT BY: CHIEF OFFICER

REPORT NO: DIJB52-2022

1.0 PURPOSE OF REPORT

To update the Integration Joint Board on the introduction of the National Care Service (Scotland) Bill to the Scottish Parliament, and on related developments to co-design the proposed National Care Service.

2.0 RECOMMENDATIONS

It is recommended that the Integration Joint Board (IJB):

- 2.1 Note the content of this report, including the summary of the National Care Service (Scotland) Bill and arrangements for co-design of the National Care Service (sections 4.2 and 4.3).
- 2.2 Note that arrangements are being progressed to develop a response to the Scottish Parliament Call for Views on the National Care Service (Scotland) Bill on behalf of Dundee Health and Social Care Partnership by the deadline date of 2 September 2022 (section 4.2.4 and 4.2.5).
- 2.3 Instruct the Chief Officer to review and update the strategic risk register to reflect the risks identified in section 6 of this report.

3.0 FINANCIAL IMPLICATIONS

- 3.1 None.

4.0 MAIN TEXT

4.1 Background

- 4.1.1 The Independent Review of Adult Social Care in Scotland (the Independent Review), published by the Scottish Government in February 2021, made a range of recommendations intended to improve adult social care, primarily in terms of the outcomes achieved by and with people who use services, their carers and families, and the experience of people who work in adult social care (report available at: <https://www.gov.scot/publications/independent-review-adult-social-care-scotland/>). This included setting out the case for and proposed operation of a National Care Service on an equal footing to NHS Scotland, with a Chief Executive accountable to Scottish Ministers. The Independent Review recommended that the National Care Service should lead on activity best managed 'once for Scotland' (such as workforce planning and development; support for people whose needs are very complex or highly specialist, prison social care and data, research and innovation) and establish a national improvement programme for adult social care, with a view to improving outcomes and closing the implementation gap. It also recommended significant reform of Integration Joint Boards to enable them to take full responsibility for the commissioning and procurement of adult social care support locally, accountable directly to the Scottish Ministers through the National Care Service. A summary of the Independent Review was considered by the Dundee Integration Joint Board in April 2021 (article XI of the minute of the meeting of the Dundee Integration Joint Board held on 21 April 2021 refers).

4.1.2 Following on from the Independent Review, the Scottish Government undertook a public consultation on proposals for a National Care Service to achieve changes to the system of community health and social care in Scotland. The consultation period ran from 9 August 2021 to 2 November 2021. The purpose of the proposed reforms was to consistently deliver high quality care and support to everyone across Scotland that needs them, including better support for unpaid carers, and to ensure that care workers are respected and valued. The consultation was intended to directly shape primary legislation to establish a National Care Service to achieve this purpose. In October 2021, the Integration Joint Board noted a range of activity being progressed at a local level to contribute to the consultation process (article XI of the meeting of the Dundee Integration Joint Board held on 27 October 2021 refers), including:

- Raising awareness of the consultation amongst people who use health and social care services and supports, carers and the wider public and provide information about different routes through which people could contribute their views;
- Issuing information to local providers of health and social care services and supports, to encourage and support providers to respond to the consultation;
- Providing an opportunity to each of the Partnership’s Strategic Planning Groups to have a facilitated discussion regarding key proposals and capture views to inform a response on behalf of the Dundee Health and Social Care Partnership;
- Providing a briefing session to the Integration Joint Board and Strategic Planning Advisory Group (28 September 2021) to enable members to contribute to a response on behalf of the Dundee Health and Social Care Partnership; and,
- Distributing materials across the Partnership workforce to support team / service level facilitated discussions and individual responses to the consultation document.

A consultation response was submitted by the Chief Officer on behalf of the Dundee Health and Social Care Partnership prior to the end of the consultation period. The submitted response is available at: https://consult.gov.scot/health-and-social-care/a-national-care-service-for-scotland/consultation/view_respondent?show_all_questions=0&sort=submitted&order=ascend&_q_text=dundee&uuld=747905341.

4.1.3 The Scottish Government received 1,291 responses to the consultation. An independent analysis of the responses received was published by the Scottish Government in February 2022 (available at: <https://www.gov.scot/publications/national-care-service-consultation-analysis-responses/>). The analysis reported a high level of agreement (72% of 660 people) that Scottish Ministers should be accountable for the delivery of social care through a National Care Service. Key themes emerging from the consultation process regarding the proposal to establish a National Care Service included: avoiding additional bureaucracy; maintaining local accountability; the role of local authorities; the need for more detailed proposals to inform the debate; transition risks; the extent of the proposed National Care Service; and, the delivery model for services under the National Care Service.

4.2 National Care Service (Scotland) Bill

4.2.1 On 20 June 2022 the National Care Service (Scotland) Bill was introduced to the Scottish Parliament. The Bill contains provisions that, if passed, will allow Scottish Ministers to transfer social care responsibility from local authorities and healthcare functions from the NHS to a National Care Service. The Bill and associated memorandum and explanatory notes can be viewed at: <https://www.parliament.scot/bills-and-laws/bills/National-Care-Service-Scotland-Bill/introduced>.

4.2.2 The Scottish Government has described the Bill as a ‘framework Bill’ that provides Scottish Ministers with the powers required to establish a National Care Service whilst developing the detail of the arrangements to be put in place in partnership with stakeholders through a co-design process. It is intended that these detailed arrangements will subsequently be implemented through secondary legislation. Key provisions contained within the Bill are:

- Part 1 – The National Care Service
 - Sets out the National Care Service principles that must be reflected in everything that Scottish Ministers do in discharging a new duty to “...promote in Scotland a care service designed to secure improvement in

the wellbeing of the people of Scotland." (See appendix 1 for proposed principles).

- Provides for the establishment of a National Care Service, which is to be understood as an umbrella term (rather than a single legal entity) encompassing functions delivered by or on behalf of Scottish Ministers through Special Care Boards or Local Care Boards.
 - Sets out requirements for all functions to be covered by a three-year strategic plan, including an ethical commissioning statement, developed in consultation with community planning partners and the public and approved by Scottish Ministers.
 - Provides for the establishment of a National Care Service Charter of rights and responsibilities and a national mechanism for receiving and processing complaints about services that the National Care Service provides.
 - Allows for the transfer of functions from local authorities, from a list of specified functions, with the pre-condition that the transfer of children's and justice functions must be subject to consultation and further regulations approved by the Scottish Parliament. The Bill also allows for the transfer of healthcare functions from the NHS and for the redistribution of functions between Scottish Ministers, Local Care Boards and Special Care Boards.
 - Enables the transfer of local authority staff alongside the transfer of functions; the transfer of health board staff is specifically excluded. The Bill also provides for the transfer of properties and liabilities from both local authorities and health boards.
- Part 2 – Health and Social Care Information
 - Allows for the establishment of arrangements that support lawful sharing of information between the National Care Service and the NHS. This includes provisions to establish information standards that the National Care Service, NHS and contractors must follow when processing and storing information.
 - Part 3 – Reforms Connected to Delivery and Regulation of Care
 - Provides for the establishment of a right to a break for unpaid carers through amendment of the Carers (Scotland) Act. This includes a duty for local authorities to provide support to enable sufficient breaks, not subject to local or national eligibility criteria. It also introduces requirements for statutory carers strategies to describe the support to be put in place to enable breaks.
 - Enables Scottish Ministers to require care home providers to comply with Ministerial directions on visiting.
 - Amends existing legislation to enable the Care Inspectorate to move straight to cancellation of registration in specific, defined circumstances without first issuing improvement notices and waiting periods.
 - Schedule 1 – Care Boards – Constitution and Operation
 - Sets out requirements in relation to annual accounts and annual reports, including requirements for submission to the Scottish Parliament and publication.
 - Makes provision for the appointment of members to Care Boards by Ministers and also the appointment of Care Board Chief Executives.
 - Makes provisions that will allow Care Boards to decide what other staff they will employ and clarifies that these staff will have their terms and conditions set by Scottish Ministers.

4.2.3 Alongside the Bill the Scottish Government has published a range of supporting resources, including a National Care Service Statement of Benefits, a series of data and evidence papers setting out key sources of information to support the development of the National Care Service, and impact assessments. These materials are available at: <https://www.gov.scot/collections/national-care-service/>. The Statement of Benefits sets out that the Scottish Government commitment is that the National Care Service will:

- enable people of all ages to access timely, consistent, equitable and fair, quality health and social care support across Scotland;
- provide services that are co-designed with people who access and deliver care and support, respecting, protecting and fulfilling their human rights;

- provide support for unpaid carers, recognising the value of what they do and supporting them to look after their health and wellbeing so they can continue caring, if they so wish, and have a life beyond caring;
- support and value the workforce;
- ensure that health, social work and social care support is integrated with other services, prioritising dignity and respect, and taking account of individual circumstances to improve outcomes for individuals and communities;
- ensure there is an emphasis on continuous improvement at the centre of everything we do;
- provide opportunities for training and development, including the creation of a National Social Work Agency providing national leadership, oversight and support; and,
- recognise the value of the investment in social care support, contribute to the wellbeing economy, make the best use of public funds, and remove unnecessary duplication.

4.2.4 On the 8 July 2022 the Scottish Parliament launched its call for views on the Bill, which will remain open until 2 September 2022 (full details available at: <https://yourviews.parliament.scot/health/national-care-service-bill/>). There are two routes for submitting views. The first is through completion of an online submission form, which contains 42 questions covering general views about the Bill and the Financial Memorandum as well as specific questions about the detailed provisions within the Bill. The second route is through a Scottish Parliament engagement webpage for the Bill where, once registered, anyone can share comments, questions, hopes and concerns about the Bill.

4.2.5 Work has begun to gather views from local stakeholders to inform a Dundee Health and Social Care Partnership response to the call for views through the more detailed online submission form. This will follow a similar process outlined at section 4.1.2 however will be impacted by ongoing resource pressures and the busy holiday period. It is anticipated that a development session will be offered to Strategic Planning Advisory Group and Integration Joint Board members in mid to late-August as part of this process. Discussions are also being progressed with Dundee City Council Communications Team regarding promotion of the opportunity to provide views to members of the public and the workforce; for these stakeholders, the focus will be on promoting the engagement website as it offers a more accessible way for people to contribute their views.

4.2.6 Some national organisations have published statements setting out their initial response to the publication of the Bill, whilst also noting that further time is required to fully consider the detail and respond to the call for views. COSLA's, the organisation providing a collective voice on behalf of local government in Scotland, initial response focuses on the future of Children's Services and their belief that the Bill goes beyond the scope of the Independent Review of Adult Social Care and is not supported by evidence or data. The response also notes concerns about losing focus on locally planned and delivered care and the disruption that could be associated with "*unnecessary structural reform*". The full COSLA statement can be read at: <https://www.cosla.gov.uk/news/2022/national-care-service-bill>. Unison Scotland, a trade union representing workers delivering public and related services across Scotland, has published a response that expresses significant concerns about the Bill and its potential implications. This includes that the proposed National Care Service continues to frame social care as a commodity in a market rather than a public service for citizens and that it represents an "*attack on local democracy*" (see <https://unison-scotland.org/national-care-service-bill/> for full statement). It is expected that further statements will be published during July and August 2022 by other national representative bodies.

4.3 Co-Design of Proposed National Care Service

4.3.1 The Scottish Government has published a Co-design and the National Care Service document (available at: <https://www.gov.scot/publications/national-care-service-co-design-national-care-service/documents/>) to explain the way in which collaboration will work as they co-design the National Care service. The report notes that the majority of decisions about the National Care

Service have not yet been made, with the detail of what the National Care Service may become and how it will function to be developed through the co-design process.

4.3.2 The document sets out the Scottish Government’s commitment to putting “...*lived experience at the heart of our future co-design programme to ensure that it embodies human rights principles and delivers for the needs of people and not the system.*” Some of the key ways in which the Scottish Government intends to facilitate the co-design of the National Care Service are:

- Annual National Care Service Gathering to involve a wide range of people with experience of social care support and other relevant services and to provide a yearly check-point in the development process.
- National Care Service Design Investigations (April – June 2022) with members of the public to explore in more detail themes emerging from the consultation process that preceded the Bill. There will be a focus on exploring evidence and issues, as well as looking at how co-design of specific elements can be taken forward. There will be an initial focus on the Charter of Rights, national complaints process and electronic health and social care record.
- National Care Service Design School (launching in Summer 2022) will offer training and support to organisations and people who access and deliver social care support to enable them to work in partnership to design services. The Design School will also provide space for collaborative work between those who deliver and those who receive care services.
- Lived Experience Partners Panel will be established as a mechanism through which people can register to be involved in co-design activities.

4.3.3 In addition, the Scottish Government’s Social Covenant Steering Group, made up of people who access and deliver social care support, has been established to review plans for co-design and engagement, ensuring that lived experience and the views of people are central to the development of the National Care Service. The group has been meeting since July 2021. A Key Stakeholder Reference Group has also been established, the purpose of which is to bring together a range of experts and practitioners to provide advice, scrutiny and challenge on proposed process, design and delivery plans.

4.3.4 The Scottish Parliament and Scottish Government have not yet published a timetable setting out the full timeline for the co-design and Bill process. However, information shared through national fora suggests that it is currently planned that the Bill will move to Stage 2 in early 2023 with a view to the Bill passing Stage 3 in Summer 2023. To support this timeline it is anticipated that the co-design process will require to be at an advanced stage by early 2023.

5.0 POLICY IMPLICATIONS

5.1 This report has been subject to the Pre-IIA Screening Tool and does not make any recommendations for change to strategy, policy, procedures, services or funding and so has not been subject to an Integrated Impact Assessment. An appropriate senior manager has reviewed and agreed with this assessment.

6.0 RISK ASSESSMENT

Risk 1 Description	There is insufficient capacity within the Dundee Integration Joint Board and Dundee Health and Social Care Partnership to fully engage in the Bill and co-design processes and to fully support to public to engage in these processes
Risk Category	Political, Governance, Social
Inherent Risk Level	Likelihood 4 x Impact 4 = Risk scoring 16 (which is an Extreme risk level)

Mitigating Actions (including timescales and resources)	<ul style="list-style-type: none"> • Range of officers are making active contributions through membership of existing national groups. This will continue throughout the Bill and co-design process. • A member of the IJB is also a member of the Key Stakeholder Reference Group. • Dundee City Council Communications Team has shared information about public engagement opportunities via social media and websites. This will continue to be done as new opportunities arise. • Local services are supporting individuals and groups of people to engage with the Bill and co-design process.
Residual Risk Level	Likelihood 3 x Impact 4 = Risk scoring 12 (which is a High risk level)
Planned Risk Level	Likelihood 3 x Impact 4 = Risk scoring 12 (which is a High risk level)
Approval recommendation	The IJB should update their strategic risk register to reflect the above risk and to enable ongoing monitoring.

Risk 2 Description	The uncertainty associated with the Bill and co-design process impacts on workforce health and wellbeing and recruitment and retention (further compounding existing challenges and pressures), continuity of financial and strategic planning, and creates uncertainty and worry for users of health and social care services and carers in Dundee.
Risk Category	Workforce, Operational, Governance, Financial, Social
Inherent Risk Level	Likelihood 3 x Impact 4 = Risk scoring 12 (which is a High risk level)
Mitigating Actions (including timescales and resources)	<ul style="list-style-type: none"> • Plans are being progressed to produce a replacement strategic commissioning plan, providing overall strategic direction and priorities for the period until it is proposed the National Care Service is introduced. • A five-year financial plan has been produced and is refreshed on an annual basis. • Current statutory requirements for financial planning and strategic planning will remain in place while the Bill process is ongoing. • Communications channels will be utilised to emphasise to the workforce, people who use services and carers that service arrangements will remain in place throughout the Bill process. Ongoing reinforcement of this message will be undertaken as required.
Residual Risk Level	Likelihood 3 x Impact 3 = Risk scoring 9 (which is a High risk level)
Planned Risk Level	Likelihood 3 x Impact 3 = Risk scoring 9 (which is a High risk level)
Approval recommendation	The IJB should update their strategic risk register to reflect the above risk and to enable ongoing monitoring.

7.0 CONSULTATIONS

7.1 The Chief Finance Officer, Heads of Service, Health and Community Care and the Clerk have been consulted in the preparation of this report.

8.0 DIRECTIONS

8.1 The Integration Joint Board requires a mechanism to action its strategic commissioning plans and this is provided for in sections 26 to 28 of the Public Bodies (Joint Working)(Scotland) Act 2014. This mechanism takes the form of binding directions from the Integration Joint Board to one or both of Dundee City Council and NHS Tayside.

Direction Required to	Direction to:	
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Dundee City Council, NHS Tayside or Both		
	1. No Direction Required	X
	2. Dundee City Council	
	3. NHS Tayside	
	4. Dundee City Council and NHS Tayside	

9.0 BACKGROUND PAPERS

9.1 None.

Vicky Irons
Chief Officer

DATE: 9 August 2022

Kathryn Sharp
Service Manager, Strategy and Performance

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Appendix 1

National Care Service (Scotland) Bill

Part 1, Chapter 1, Section 1 – That National Care Service Principles

The National Care Service principles are—

(a) the services provided by the National Care Service are to be regarded as an investment in society that—

- (i) is essential to the realisation of human rights,
- (ii) enables people to thrive and fulfil their potential, and
- (iii) enables communities to flourish and prosper,

(b) for them to be such an investment, the services provided by the National Care Service must be financially stable in order to give people long-term security,

(c) services provided by the National Care Service are to be centred around early interventions that prevent or delay the development of care needs and reduce care needs that already exist,

(d) services provided by the National Care Service 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 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.

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