



Royal College
of Nursing
Scotland

**RCN Scotland's response to the Scottish Parliament call
for views on draft amendments to the**

National Care Service (Scotland) Bill (Stage 2)

26 September 2024

**This response was originally submitted using
a Scottish Parliament online form**

Introduction

The Royal College of Nursing (RCN) is the world's largest nursing union and professional body. It is the leading national and international authority in representing the nursing profession. We represent over half a million nurses, student nurses, midwives, nursing associates and nursing support workers in the UK and internationally.

The RCN has over 49,500 members in Scotland. We campaign on issues of concern to nursing staff and patients, influence health policy development and implementation, and promote excellence in nursing practice.

Background

The Scottish Government introduced the National Care Service (Scotland) Bill in the Scottish Parliament on 20 June 2022.

The Parliament's Health, Social Care and Sport Committee published its Stage 1 report on the general principles of the Bill on 22 February 2024. On 29 February 2024, the Parliament voted to approve the general principles of the Bill at Stage 1.

The Committee is now issuing a call for written evidence to hear your views about the draft amendments the Scottish Government is proposing to make to the Bill as introduced at Stage 2.

Consultation questions and RCN Scotland responses

National Care Service strategy

Q1 - 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 text box below to expand on your answer (3,000 character limit)

RCN Scotland response:

As we have made clear, we share the Scottish government's desire to improve the quality and consistency of social care and community health services. We are not for or against the creation of an NCS. Instead, we set out clear priorities for reform including:

- Achieving a workforce that reflects increasing clinical need
- Improved workforce planning as well as compliance with the Health and Care (Staffing) Act 2019
- Fair pay, terms and conditions for nursing staff employed in the social care sector, as well as improved access to training and development and clear career pathways
- Clear clinical and professional governance structures and processes
- An improved commissioning process which is based on outcomes and a proper assessment of unmet need and future demand, ensures fair work and obliges and funds providers to staff their services safely.
- Improved social care nursing workforce data.

Earlier this year we urged the Scottish Government to withdraw the Bill as we had serious concerns about the legislative approach and about the Bill being progressed without a clear understanding of how to fix the current problems facing the sector.

We remain of the view that the Bill overall will not deliver against our priorities for reform, outlined above, and that the focus on the NCS will not address the current crisis in service capacity or tackle workforce shortages and recruitment and retention challenges.

However, we understand that the Scottish government is committed to pressing ahead with plans for an NCS and we will continue to engage to ensure that nursing issues are central to reform.

The development of a national strategy has the potential to be useful, but only if it sets out the serious challenges facing services in a meaningful way; it cannot gloss over the crisis.

It should include robust workforce planning to ensure services have the right staff, with the right skills, to deliver high quality, safe services. We would like to see the Bill include a requirement for Ministers to carry out national workforce planning as well as a duty on Ministers to report to the Scottish Parliament annually on the systems in place for assessing and meeting the workforce needs of the NCS, including current and forecast workforce requirements. Given that the national strategy should set out key challenges facing NCS services, as well as the proposed action to address these, workforce planning and action to tackle recruitment and retention challenges should form a key part of the strategy.

The strategy must also include robust fair work commitments, detail how fair work principles will be incorporated within ethical commissioning and strategic planning processes, and set out how these will be enforced.

The strategy cannot ignore the perilous financial position of IJBs. The recent Accounts Commission report outlined the serious financial risk facing IJBs, an issue which has not been addressed by Scottish Government.

National Care Service Board

Q2 - 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 text box below to expand on your answer (3,000 character limit)

RCN Scotland response:

Development of the NCS must recognise the essential role of the registered nurse in community services and care homes and ensure that clear clinical and professional governance processes are embedded within reformed structures. We don't feel that the amendments achieve this. Improved national oversight, monitoring and improvement has potential to be beneficial, particularly given that social care has been undervalued, and hasn't received the attention it deserves, for so long. However, the shared accountability arrangement is very complex and it remains unclear to what extent Ministers, who are ultimately responsible for financial decisions, are accountable for services.

We are also concerned that the governance arrangements are not clear, nor is it clear where responsibility for workforce planning sits. Indeed, the Bill could make workforce planning more difficult because accountability will be shared between three partners. We believe these issues need clarified in the Bill.

The Bill as drafted did not go far enough on training as it provided that Ministers and care boards may provide training courses for staff. Similarly, draft amendment [PCO109] provides that the NCS Board may provide training for individuals to equip them with knowledge and skills relevant to the provision of services by the NCS. Providing staff with training and opportunities to develop must be a required function rather than optional; we know that training and development is one of the first things to go when services are under pressure.

We are also not clear where responsibility lies for ensuring all NCS nursing staff receive protected time for statutory and mandatory learning, as well as for learning that is professionally mandated or required to develop in their role. There must be clarity in the legislation where responsibilities sit for overseeing and ensuring consistency of access to education and professional development of staff across all NCS services and whoever the staff member's employer .

With regards to membership of the NCS Board, we welcome plans for all members to have full voting rights and continue to call for senior nurse leadership on the Board. We recognise that there will be many voices calling for representation on the board, however, we are clear that nursing expertise is crucial in the strategic leadership of the NCS, particularly given increasing levels of complex clinical need within social care settings and that nursing is likely to be the largest part of the NCS workforce .

Proper clinical and professional governance requires a complete professional infrastructure that provides clear, unambiguous and appropriate routes for escalation and decision making from every nursing practitioner through to the nurse on the Board. RCN Scotland expect to see this infrastructure put in place to support and protect nurses working in all specialisms and at all levels across our health and social care system.

Creation of local boards and removal of other integration models

Q3 - 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 text box below to expand on your answer (3,000 character limit)

RCN Scotland response:

The Scottish government states that improvements in local delivery will be achieved through reform of integration authorities. However, there is little evidence that what is being proposed is anything more than a rebranding exercise of IJBs, with the costs that are associated with such an exercise and little benefit.

As highlighted in response to question 2, the current governance structures are not clear. There needs to be clarity around governance structures and how the NCS local boards will interact with the National Board, Scottish Ministers and other partners.

As the NCS will now be delivered by reforming Integration Authorities, we believe there is an opportunity to strengthen the voice of nursing within the integration landscape. We are calling for Integration Authority nurse board members to have full board member status. In our view, the distinction between voting members and professional advisers within integration authorities needs to be addressed to better embed the professional expertise required to deliver safe, high quality and efficient care. This has become ever more important due to the increasing levels of complex clinical care being delivered within the community settings, for which integration authorities have responsibility for delivering.

If the Scottish government accepts that a nurse director with voting rights (among other professional leaders) is central to the work of the NHS board of governance, this should be matched by an equivalent statutory presence on integration authorities, given they have delegated governance responsibility for significant amounts of healthcare delivery including in a social care setting. The fact that emergency measures needed to be put in place during the Covid pandemic to give Executive Nurse Directors additional responsibilities for care homes demonstrates the need for this professional expertise within NCS structures.

There also needs to be greater clarity around how the differences in the services that are delegated to integration authorities in different areas will be dealt with. Is it the intention for the National Board to oversee different services in different parts of Scotland, depending on what has been delegated? If so, what will be the impact of this?

Section 12B would remove alternative integration models which has implications for Highland where the lead agency model is used. Moving from a lead agency model to an IJB model is a significant change with legal, financial and governance implications and it would be useful to learn why this flexibility in approach is being removed.

We are seeking more information from the Minister, as well as the Chief Executives of NHS Highland and Highland Council, about the implications for the workforce. The impact on employment status and terms and conditions of employment must be articulated, with a guarantee of no detriment to nursing staff impacted by these changes.

Monitoring and improvement and commissioning

Q4 - 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 text box below to expand on your answer (3,000 character limit)

RCN Scotland response:

Any changes to improvement responsibilities, methodologies and structures must be evidence based and fully informed by people using services, people staffing and providing services, and people who currently scrutinise, inspect, and support services to improve.

It is also worth noting that investment is needed in order to improve the quality and consistency of services which has not been adequately addressed by the Scottish government. Giving the national board a role over monitoring and improvement will not

result in improved outcomes if services remain underfunded and therefore unable to provide high quality care and safe staffing.

Commissioning

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

Please use the text box below to expand on your answer (3,000 character limit)

RCN Scotland response:

No comment to make.

National Chief Social Work Adviser and the National Social Work Agency

Q5 - 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 text box below to expand on your answer (3,000 character limit)

RCN Scotland response:

No comment to make.

Amendments to the Public Bodies (Joint Working) (Scotland) Act 2014

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.”

Q6 - 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 text box below to expand on your answer (3,000 character limit)

RCN Scotland response:

Please see our response to question 3 for our views on the reform of integration bodies and the creation of NCS local boards.

One of the effects of the proposed amendments [PCO115] to the Public Bodies (Joint Working) Act 2014 will allow Ministers to increase the range of functions that can be delegated through the integration scheme, which means Ministers can expand the scope of the NCS via regulations. These are complex and substantial changes which will not receive the normal stage 1 parliamentary scrutiny. The lack of clarity around the scope of the NCS remains which means it continues to be very difficult for us to scrutinise these plans.

As stated above, we are calling for the nurse members of NCS local boards to be full voting members. This clinical leadership is crucial due to the increasing levels of complex clinical care being delivered within the community and social care settings, for which NCS local boards will have responsibility for delivering.

Areas of further work

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.”

Q7 - 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

Please use the text box below to expand on your answer (3,000 character limit)

RCN Scotland response:

No comment to make.

Inclusion of children's services

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

Please use the text box below to expand on your answer (3,000 character limit)

RCN Scotland response:

As highlighted above, the ongoing uncertainty about the scope of services to be included in the NCS makes it very difficult for us to scrutinise the plans effectively. Transitions between children's and adult services are difficult and problematic for young people using services across health and social care. Whether locating children's services within the NCS along with adults' services will solve that problem is not something on which RCN Scotland can take a view yet; improvement would not necessarily follow, as we see with the issues there are in transitioning from children's to adults' services within the NHS. It is, however, imperative that focus and resource are applied to improving these transitions across health and social care.

Inclusion of Justice Social Work

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

Please use the text box below to expand on your answer (3,000 character limit)

RCN Scotland response:

As highlighted above, the ongoing uncertainty about the scope of services to be included in the NCS makes it very difficult for us to scrutinise the plans effectively. Any reform to care models needs to account for the complexity of how prisons are governed, and the role of the Scottish Prison Service and the prison governor. Social care staff working in prisons

require detailed and supportive care, professional and clinical governance for operating safely. An outcomes-based model will support rights based, person centre care, but it must be able to take into account and respond to the complex range of needs - not only health and social care needs - that many people in prison have.

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 text box below to expand on your answer (3,000 character limit)

RCN Scotland response:

No comment to make.

Draft National Care Service Charter

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.

Q8—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 text box below to expand on your answer (3,000 character limit)

RCN Scotland response:

RCN Scotland agrees with the principle that certain national standards are desirable and necessary to improve equity of access to social care and ensure that services can deliver a preventative and person-centred approach.

However, it is also vital that national standards require staffing levels and skills mix appropriate to the needs of service users and ensure that the social care workforce has fair pay, terms and conditions. Processes should be developed with the specific intention of achieving better outcomes for social care staff i.e. improving pay, terms and conditions, access to training and professional development, and more integrated working with counterparts.

We recognise that the Scottish Government proposes that the NCS will (separate to the Bill process) develop guidance for ethical commissioning and procuring of social care services. However, as the need to improve outcomes for social care staff is so great, we believe that this is an issue that should be addressed as part of the creation of the NCS and consideration should be given to extending the National Care Service Charter to include fair work as one way of achieving this. The Scottish government has previously talked about creating a Workforce Charter as part of the NCS co-design work but we've not seen an update on this.

Our experience of the co-design work has given us some concerns that a view is emerging that service users and staff are opposing groups, with divergent interests. The reality is that staff want what's best for service users and are doing the best they can with the time and resources available to them. Creating a Charter for service users, but not clearly setting out the rights of staff, risks perpetuating this view.

Other comments

Q9 - 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 text box below to expand on your answer (3,000 character limit)

RCN Scotland response:

We agree that reform is needed; the social care and community health sectors are in crisis and there is a need for urgent action to tackle serious issues around workforce shortages and access to services in a sustainable way. However, we remain doubtful that the Bill will achieve this objective or address the serious challenges facing the sector.

Individuals who require social care and community health services, and those who work in these sectors, cannot afford to wait until the creation of an NCS for the serious issues around workforce shortages and access to services to be addressed in a sustainable way.

We remain concerned that the Bill doesn't go far enough on fair work, nor does it set out how the fair work principle will be enforced. The delivery of fair work is vital for tackling the workforce crisis within social care and cannot wait until the creation of an NCS. We welcome the Committee's clear conclusion that a crucial aspect of achieving fair work is improving pay, terms and conditions and parity in social care. We support the establishment of a sectoral pay bargaining system and for nursing staff to have equal pay, terms and conditions to equivalent roles in the NHS.

It is also vital that the Bill makes clear that the safe staffing duties introduced by the Health and Care (Staffing) (Scotland) Act apply to all services within the scope of the NCS. We welcome the fact the Scottish government previously committed to amending the Bill to this effect, but we seek clarity as to whether the proposed amendments would achieve this.

We also want to highlight our continued concerns about how much co-design is meaningful. RCN Scotland welcomed the creation of an Expert Legislative Advisory Group – indeed we were signatories to a letter calling for further input from stakeholders ahead of the Stage 1 report. However, what was established fell far short of our expectations and failed to make any meaningful impact on the Bill or draft amendments.

ELAG members had no say over the agenda or topics for discussion which were set by the Scottish government. Several ELAG members highlighted their disappointment that no workforce session was held, yet this was not added to the agenda. ELAG members were never given sight of any draft amendments, only high-level policy intention documents, and we were therefore unable to meaningfully contribute to the development of amendments. ELAG members' concerns were downplayed in the summary provided to the Committee. The

Minister's letter infers that ELAG were supportive of amendments, and this was not the case. At no time was any quantitative data taken in terms of support for proposals. Weekly meetings were a significant resource requirement for RCN Scotland, with little meaningful outcomes in terms of influencing change. Our experience of ELAG means we will be much less likely to participate in similar co-design processes in future.



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