

SCOTTISH GOVERNMENT CONSULTATIONS:-

- **A NATIONAL CARE SERVICE FOR SCOTLAND**
 - **COVID RECOVERY – A CONSULTATION ON PUBLIC SERVICES, JUSTICE SYSTEM AND OTHER REFORMS**
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1. EXECUTIVE SUMMARY

- 1.1 This report provides members with an awareness of the following two consultations, which have been recently launched by the Scottish Government (SG):-
- 1.2 [A National Care Service for Scotland](#) - this consultation sets out proposals to improve the way social care is delivered in Scotland, following the recommendations of the Independent Review of Adult Social Care (IRASC), which was Chaired by Derek Feeley, a former SG Director General for Health and Social Care and Chief Executive of NHS Scotland. A copy of this report, which was published in February 2021, is available to view [here](#). The deadline for responses to this consultation is 2nd November 2021.
- 1.3 [Covid Recovery](#) – this consultation invites views on specific legislative proposals to support Covid Recovery, including proposals for greater public health resilience, for public services and justice system reform and to respond to the impact of Covid in the justice system in particular. The deadline for responses to this consultation is 9th November 2021
- 1.4 Officers are currently in the process of preparing full responses to both consultations and, on the basis that both are due in November, it is proposed that a Special Council meeting is convened on 28th October 2021 to consider and agree the final responses for both consultations.

2. RECOMMENDATIONS

Members are asked to:-

- 2.1 Note the work that is ongoing by Officers to prepare response to both consultations;
- 2.2 Agree to convene a Special Council meeting on 28th October 2021 to consider and agree the final submissions for both consultations.

3. DETAIL

3.1 A National Care Service for Scotland

3.1.1 On 9th August the SG launched the consultation “A National Care Service for Scotland”, which follows on from the IRASC report that was commissioned to recommend improvements to adult social care in Scotland. It concluded that whilst there were strengths of Scotland’s social care system, it needed revision and redesign to enable a step change in the outcomes for the people in receipt of care.

3.1.2 The consultation document has now extended the scope of the review to other service areas including children and families, community justice, alcohol and drug services, mental health services, and social work. The proposals have the potential to be the largest and most significant public sector reform in Scotland for decades.

3.1.3 The purpose of the consultation is to seek views from a range of stakeholders ahead of the creation of a NCS. The closing date for responses is 2nd November and the end of the consultation process all feedback will be analysed and conclusions will be used to shape and develop new legislation. It is anticipated that any new legislation (a bill) will be developed and introduced in the Scottish Parliament in summer 2022, with the intention that the NCS will be fully functioning by the end of the Parliamentary term in 2026.

3.1.4 The consultation contains 96 questions around 11 main themes, which are listed below. Further detail on the proposals contained within each theme is provided in **appendix 1** of this report.

1. Improvement
2. Access to care and support
3. Rights to breaks from caring
4. Using data to support care
5. Complaints and putting things right
6. Residential care charges
7. National Care Service and extended scope
8. Reformed IJBs – Community Health and Social Care Boards (CHSCBs)
9. Commissioning of Services
10. Regulation and scrutiny
11. Valuing people who work in social care

3.1.5 As part of the preparatory work being undertaken to develop a response to this consultation, Officers are giving detailed consideration to a number of implications/issues arising from the proposals, including:-

- Concerns about the diminution on local decision making and the detrimental impact on service delivery
- Impact on service users – e.g. unique remote/rural challenges in Argyll and Bute not considered, concerns about current joined up

working/collaborative working being diminished, ability to provide equity of provision

- Financial implications – e.g. funding of proposals, financial risks for the Council
- Impact on local government workforce and the future role of the Council as an employer
- Impact on local government remit, legal obligations and governance arrangements
- General lack of detail/clarity within the consultation in respect of key elements of the proposals – impacts on our ability to respond sufficiently

3.1.6 A Members Seminar was held on 21st September to discuss the content of this consultation in further detail and to invite comments and questions from Councillors. The outcomes from this session will be factored into the final response being prepared.

3.2 Covid Recovery – A Consultation on Public Services, Justice System and other Reforms

3.2.1 On 17th August 2021 the SG launched the “Coronavirus (COVID-19) Recovery – Justice System, Health and Public Services Reform Consultation. This consultation invites views on a range of legislative proposals that the SG think will have the potential to support Covid recovery:-

- Proposals for greater public health resilience, to protect Scotland against future public health threats;
- Proposals for public services and justice system reform, to ensure that the benefits of practical modernisations put in place during the pandemic are not lost; and
- Proposals to respond to the impact of Covid in the justice system specifically, where backlogs have unavoidably built up.

3.2.2 A full list of the topics being consulted on, together with a summary of the proposals, can be found at **appendix 2** of this report.

3.2.3 Officers are in the process of preparing a response to this consultation and as part of this exercise consideration is being given to the following principles in the formulation of our response:

- Whether the proposals provide an enhancement of civil liberties
- Provide a more efficient and effective conduct of business
- Little or no additional resource requirement to deliver
- Would avoid any reinstatement of outdated or ineffective practices.
- Whether the proposals enhance an individual’s access to services.

3.3 Any member who wishes to provide comments on either of these consultations, for consideration as part of the overall responses, can do so by emailing Laura Blackwood – laura.blackwood@argyll-bute.gov.uk in advance of the consultation deadlines set out above.

4 CONCLUSION

- 4.1 This report provides members with an awareness of two consultations which have been recently launched by the SG in respect of the creation of a NCS for Scotland and Covid Recovery. Officers are currently in the process of preparing full responses to both consultations, with submissions due by 2nd and 9th November 2021 respectively. Members are being asked to agree that a Special Council be convened on 28th October 2021 to consider and agree the final submissions for both consultations.

5 IMPLICATIONS

- 5.1 Policy – none arising from this report
- 5.2 Financial – lack of financial information contained in the NCS consultation document but it is envisaged that significant investment will be required to deliver the proposals.
- 5.3 Legal – envisage new legislative requirements being introduced summer 2022 in respect of NCS
- 5.4 HR – Significant potential implications for Council employees working in social work and social care arising from NCS consultation – further detail required to ascertain impact.
- 5.5 Equalities/Fairer Scotland Duty – none arising from this report
- 5.6 Risk – none arising from this report
- 5.7 Customer Services – none arising from this report

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A National Care Service for Scotland – Summary of Proposals

1. Improvement

- The establishment of a single, national body with clear lines of accountability to Ministers at a national level, to ensure that consistent, high standards of performance are developed and maintained across Scotland.

2. Access to care and support

- Removal of eligibility criteria in current form, moving away from a focus on risk and instead focusing on enabling people to access the care and support they need;
- Single approach to care and support services covering all types of care and support from early intervention to specialist intervention;
- Focus on prevention and early intervention;
- Development of a Getting It Right For Everyone (GIRFE) National Practice Model, building on the success of Getting It Right For Every Child (GIRFEC) multi agency approach;
- Single adult's plan and a single planning process.

3. Rights to breaks from caring

- Introduce a right to breaks from caring as part of a single, outcomes-focused approach to care and support, which stretches from prevention and early intervention to acute and specialist provision. The consultation sets out a number of potential options to achieve this.

4. Using data to support care

- NCS seen as an opportunity to meet expectations around how information is used to provide and support care, across all care settings and social care decision making at all levels;
- Through the NCS, the implementation of a nationally consistent, integrated and accessible electronic social care and health record that can be used and seen by all those who provide health and care support, with appropriate permissions and consent in place;
- Production of data will be used to assist care and support across all settings and to inform local and national decision making, including for strategic plans, commissioning and performance reporting;
- Compliance with data protection and Freedom of Information legislation to ensure individuals can access their own integrated social care and health record.

5. Complaints and putting things right

- National point of access for information on making a complaint or giving feedback about social care;
- Local systems for initial complaints and feedback should be strengthened to ensure similar processes across local bodies who commission and deliver services;

- Consideration to a charter for rights and responsibilities, as there are for health, for carers, and for Social Security Scotland;
- Scottish Government to consider the appointment of a commissioner for social care to champion the rights of those who receive care and support, their families and carers.

6. Residential care charges

- In line with IRASC recommendation, the consultation proposes to increase the sums paid for Free Personal and Nursing Care for self-funded care home residents to the levels included in the National Care Home Contract or consider alternatives, such as revising means testing, to assist in ensuring self-funding residents are treated fairly in their financial assessment.

7. National Care Service

- The proposals will make Scottish Ministers accountable for social care as they are for health care within Scotland;
- Establishment of a NCS, accountable to Scottish Ministers, which will have a clear focus on positive outcomes for people and define the strategic direction and quality standards. This would remove the responsibilities for social work and social care from local authorities.
- IJBs will be reformed and become CHSCBs and will be the local delivery body for the NCS. The NCS and CHSCBs will work in concert with NHS, local authorities, and the third and independent sectors to plan, commission and deliver the support services that the people of Scotland require;
- NCS itself will lead on aspects of community health and social care improvement and support that are best managed on a once for Scotland basis, such as very complex or specialist care and the planning and delivery of care in custodial settings, including prisons;
- NCS will be responsible for national workforce planning and development, data to support planning, commissioning and procurement, research to support improvement, digital enablement, and national and regional service planning.

Scope of NCS

- Children's Services
 - The SG proposal goes beyond the IRASC recommendations and indicates that is that these services are removed from local authorities and form part of the NCS.
- Healthcare
 - NCS and CHSCBs take responsibility for the commissioning and procurement of a range of health services, similar to (and potentially wider than) the range of services currently delegated to IJBs. The consultation is seeking views on what services might be included in this responsibility.
- Social Work and Social Care

- Proposal is that duties and responsibilities for social work and adult and children and families' social care services should be located within the NCS. Including social work within the NCS would mean social work's legal powers and expertise would remain inextricably linked with the delivery of care, and with the work of a National Social Work Agency
- Nursing
 - Propose to maintain the current Executive Director of Nursing role to provide professional leadership across community health and social care services, with possible expansion from the current advisory and oversight role to a role of accountability, with the NCS overseeing and ensuring consistency of access to education, professional development, standards of care and governance of nursing. The NCS could also be responsible for the commissioning of nursing in social care.
- Justice Social Work (JSW)
 - Propose that JSW is included within the NCS, but suggesting that this may be transferred in a later phase of the process.
- Prisons
 - In line with IRASC recommendations, the proposal is that the NCS should oversee social care provision for people in prison and be responsible for the planning and delivery of care in prisons.
- Alcohol and Drugs Services
 - The SG expect that CHSCBs will continue to be key partners in Alcohol and Drug Partnerships (ADPs), taking the place of IJBs and will continue to provide the governance, finance and procurement functions for them. Further consideration is being given to whether ADPs should become part of the NCS nationally and part of CHSCBs, and whether specialist provision, such as residential rehabilitation services, should be commissioned on a national basis.
- Mental Health Services
 - It is proposed that appropriate elements of mental health services should be consistently delegated to the NCS, to ensure responsibilities within and between organisations is consistently applied and understood.

National Social Work Agency (NSWA)

- SG propose that a NSWA is established alongside a centre of excellence for applied research for social work to support improvement activity (see 1 above), with both forming part of the NCS infrastructure. The NSWA would have national oversight and leadership over social work qualifications, workforce planning, improvement, training, continuous professional development and pay and grading within a national framework.

8. Reformed IJBs – Community Health and Social Care Boards (CHSCBs)

- As noted above, the SG proposes that IJBs will become CHSCBs and will be the local delivery body for the NCS, funded directly by the SG;
- The functions of CHSCBs will be consistent across the country;
- CHSCBs will be accountable to Ministers and will have members who will represent the local population, including people with lived and living experience, and carers;
- It is anticipated that CHSCBs will be aligned with local authority boundaries, unless otherwise agreed at a local level;
- Members will include local elected members to preserve local democratic accountability;
- CHSCBs will employ their own chief executives and staff who plan, commission, and procure care and support. Consideration will be given to employing other relevant staff to discharge their duties, such as chief financial officers. The chief executive of each CHSCB will report to the chief executive of the NCS;
- CHSCBs will oversee the delivery of all community health and social care services and support within their local area, and their work guided by the strategic direction, quality standards and operational framework set out by the NCS;
- CHSCBs will have responsibility and authority for planning, commissioning and procurement of community health and social care, and other relevant support, and for the management of GP contractual arrangements. They will be able to commission services from local authorities, the NHS and the third and independent sectors.
- CHSCBs will be members of community planning partnerships, taking the place of IJBs on these groups.

9. Commissioning of Services

- SG proposes that the NCS will develop and manage a National Commissioning and Procurement Structure of Standards and Processes for ethical commissioning and procuring of social care services and supports.
- The NCS will be responsible for governance and assurance that CHSCBs comply with the Structure of Standards and Processes, through oversight of commissioning and procurement processes at a local level. CHSCBs will report their progress to the NCS national commissioning and procurement team.
- The NCS will create and manage a professional development programme to ensure all commissioning and procurement professionals working within social care have the appropriate skills.
- The NCS will be responsible for market analysis and will work with partners to develop a thorough understanding of the market and share this information with CHSCBs.
- The NCS will be responsible for the commissioning, procurement and contract management of national contracts and frameworks agreements

for complex and specialist services. The NCS will establish a national commissioning and procurement team to deliver this role.

10. Regulation and scrutiny

- SG propose that scrutiny, inspection, and regulation of care services and the workforce should be undertaken independently of the NCS. The consultation document outlines a number of core principles underpinning the approach, which views are sought on.

11. Valuing people who work in social care

The consultation document seeks views on a number of people related matters, including:-

- Fair Work
 - The NCS could take the lead in the development, administration and assessment of national workforce quality standards that support the practical delivery of Fair Work principles, including rates of pay, security of employment contracts and training and development.
 - The NCS could oversee the creation of a National Job Evaluation framework/scheme which providers can opt into.
 - The NCS could provide the opportunity to implement a national pay band structure similar to that within the NHS.
 - As per 3.4.9 above, propose that the NCS will develop and manage a National Commissioning and Procurement Framework of standards and processes for social care. Commissioning and procurement will be a driving force to ensure the workforce, including personal assistants (see below) is appropriately valued.
- Workforce planning
 - Propose the development of a consistent approach to integrated workforce planning with health, supported by national tools/framework and an agreed data set.
- Training and development
 - The NCS will set training and development requirements that support both entry to the workforce and continuous professional development.
 - NCS will provide and/or secure the provision of training and development for the social care workforce. This will complement the leadership and development role proposed for social work.
- Personal Assistants
 - To understand the extent of personal assistants operating across Scotland, the SG propose that processes will be put in place to require personal assistants in Scotland to register centrally;

- There has been consideration of national minimum employment standards for personal assistants to ensure parity and fairness across Scotland;
- Consideration of provision of further administrative, recruitment or employment support to encourage further adoption of the full range of Self Directed Support options.

Covid Recovery – A Consultation on Public Services, Justice System and other Reforms

Alphabetical list of topics being consulted on

Council Response

- Topic P1 Alcohol licensing remote hearings (p23)
- This proposal would enable Licensing Boards to make discretionary decisions as to whether it would be appropriate for a hearing to be held remotely as opposed to “in person”.
- Topic P6 Care services: giving of notices by the Care Inspectorate (p31)
- The proposal is to enable the Care Inspectorate to send formal notices to care service providers by electronic means.
- Topic P7 Civic government licensing remote hearings (p32)
- This proposal relates to retention, in an amended form, of one aspect of the civic government licensing provisions in the First Scottish Act. This relates to the holding of licensing authority hearings.
- Topic P8 Courts: intimation, etc. of documents (p34)
- It is proposed that the law be permanently changed so that any requirement to display a document on the walls (or any other part) of a court building or to make it publicly available within a court can also be fulfilled by publishing the document on the Scottish Courts and Tribunals Service’s (“SCTS”) website.
- Topic J1 Courts and tribunals: conduct of business by electronic means (p53)
- It is proposed that the provisions around electronic signing and sending of documents in courts and tribunals should be extended beyond March 2022.
- Topic J2 Courts and tribunals: virtual attendance (p54)
- It is proposed that the rules allowing people to attend a court or a tribunal by electronic means (for example, by live video link) should be extended beyond March 2022.
- Topic H1 Education: powers to make directions to close educational establishments, and to ensure the continuity of education (p13)

The proposal is to make permanent provisions in the UK Act that relate to education, namely the duty on all operators of educational establishments to have regard to the advice of the Chief Medical Officer for Scotland (“CMO”), and the powers for Scottish Ministers to give directions in relation to the closure of educational establishments and the continuity of educational provision during the remainder of the current pandemic and future pandemics.

Topic P10 Freedom of Information: giving notice electronically (p37)

The proposal is to enable the Scottish Information Commissioner and Scottish public authorities to issue formal notices under the Freedom of Information (Scotland) Act 2002 (“FOISA”) electronically.

Topic H2 Power to make public health protection regulations (p15)

In order to ensure the continuance of the provisions which enable the Scottish Ministers to make regulations for the purpose of preventing, protecting against, controlling or providing a public health response to the incidence or spread of infection or contamination which presents or could present significant harm to human health in Scotland, SG are proposing to make permanent the provisions in schedule 19 of the UK Act.

Topic P16 Remote registration of deaths and still-births (p45)

It is proposed that the provisions as set out at page 45 are made permanent.

Topic P17 Remote registration of live births (p46)

The Scottish Government is proposing to develop permanent legislative provisions in relation to registration of live births. The proposed changes will build on the above revised ‘hybrid’ process for live birth registration that has been adopted as a result of the Covid pandemic.

Topic P18 Tenancies: protection against eviction (discretionary grounds of eviction); and pre-action requirements for eviction proceedings on ground of rent arrears (p48)

The intention is to ensure the continuance of the provisions which provide the First-tier Tribunal (Housing and Property Chamber – the “Tribunal”) with discretion to consider all matters relating to eviction cases going before them (First Scottish Act, schedule 1) and also provisions that set out pre-action requirements for orders for possession or eviction orders on the ground of rent arrears (Second Scottish Act, schedule 1, Part 2).

Topic H4 Virtual public meetings under the Schools (Consultation) (Scotland) Act 2010 (p18)

We intend to legislate so that in the event of a significant health emergency in the future, akin to the Covid pandemic, local authorities will have the flexibility to hold public meetings virtually. We wish this to be in place on a permanent basis so it can be utilised during any future pandemic.

HSCP Response

Topic P9 Criminal justice: arrangements for the custody of persons detained at police stations (p36)

The proposal concerns arrangements for the custody of persons detained at police stations. These provisions enable the Scottish Ministers to make arrangements for duties to be carried out by prisoner custody officers with escort functions within police stations.

Topic J3 Criminal justice: early release of prisoners (p56)

The proposal is to continue to provide Scottish Ministers with the power – where it is considered a necessary and proportionate action to maintain the safe and effective operation of prisons, and to protect the health of prison staff and prisoners – to instruct that the group of prisoners who fall within criteria set out in regulations would be released from prison earlier than their scheduled release date.

Topic J4 Criminal justice: expiry of undertaking (p58)

Proposal is that the provisions as detailed on p58 will be extended beyond March 2022.

Topic J5 Criminal justice: fiscal fines (p60)

The proposal is to seek views on whether there is merit in continuing for a longer, time-limited period policy that allows for maximum fiscal fines up to £500 to be offered by prosecutors as a non-court disposal.

Topic J6 Criminal justice: national court for cases beginning with an appearance from custody (p62)

The proposal is to extend the provision in the Act that introduces Scotland-wide jurisdiction for sheriffs dealing with first appearances from police custody and any continuation of the case up until a not guilty plea is tendered (or full committal in petition proceedings).

Topic J7 Criminal justice: time limits (p63)

SG are seeking views on whether none, some or all of the extensions of the time-limit provisions in the First and Second Scottish Acts, extended

by the Extension and Expiry Act, should continue in effect beyond March 2022.

Topic P13 Mental health: named person nomination (p40)

The proposal removes the need for a person to have their signature witnessed when they agree to become a named person.

Topic H3 Vaccinations and immunisations (p17)

The proposal is to make permanent the relaxation of the restriction within the National Health Service (Scotland) Act 1978 on vaccinations and immunisations being carried out by doctors or persons acting under their direction and control.

No response proposed

Topic P2 Bankruptcy: debt level that enables creditors to pursue the bankruptcy of a debtor through the courts (p25)

The proposal is to strengthen the protections available for those dealing with problem debt by making permanent measures that increase the minimum debt level a creditor must be owed to petition for bankruptcy through the courts.

Topic P3 Bankruptcy: electronic service of documents (p27)

The proposal is to improve the use of technology in bankruptcy proceedings by permitting documents required during bankruptcy administration to be transmitted to a person electronically.

Topic P4 Bankruptcy: moratoriums on diligence (p28)

The proposal is to protect those with unsustainable debt by increasing the length of the moratorium against diligence.

Topic P5 Bankruptcy: virtual meetings of creditors (p30)

The proposal is to improve the use of technology in bankruptcy proceedings by enabling meetings of creditors to take place by virtual means rather than in a physical environment.

Topic P11 Legal aid (p38)

The proposal is to make permanent existing temporary provisions which allow for increasing the availability of interim payments to solicitors, with corresponding powers of recovery in the event of overpayments resulting from interim payments, and removal of conditions for counsel to be able to apply for interim payment.

Topic P12 Legal writings etc. (p39)

This proposal would make permanent the disapplication of the requirement for the “physical presence” of certain parties, and allows for Scottish notaries public, solicitors and advocates to adopt alternative appropriate means of executing documents, and administering of oaths, affirmations and declarations.

Topic P14 Parole Board: delegation (p42)

The proposal is to continue to allow the Chairperson’s functions to be delegated to another member of the Parole Board should the Chairperson become incapacitated for any reason. To also continue to provide that the Chairperson may delegate functions for other reasons e.g. should another member have a particular expertise that would assist in carrying out the Chairperson’s functions.

Topic P15 Parole Board: live link (p43)

A further proposal related to the Parole Board is to allow the entire proceedings of a parole hearing to be held by video/teleconference (“live link”) so the Board or tribunal members, the parties, witnesses and others can provide evidence and participate remotely.

Topic J8 Proceeds of crime (p71)

The proposal is to keep in operation for longer two adjustments to the Proceeds of Crime Act 2002 (“the 2002 Act”) made by the Second Scottish Act.