

Introduction

On Friday 2 September 2022, Scotland Excel submitted our response to the call for views for the National Care Service (Scotland) Bill.

The Bill's purpose is to allow Scottish Ministers to transfer social care responsibility from local authorities to a new, national service.

In this response, we are seeking clarity over the future of national and local social care commissioning.

Scotland Excel's care contracts not only support the principles set out in the Feeley Review recommendations but ensure best practice and compliance with procurement legislation.

As The Centre of Procurement Expertise for Local Government, we are keen to build on the good work we have established in national procurement and commissioning together with local commissioners and providers.

Our national social care contracts provide benefits including national ethical standards, terms and conditions, sustainable rates, increased transparency, national market oversight and accountability to the sector

As Scotland Excel oversees national social care commissioning and procurement on behalf of councils – we are keen for clarity over future roles and responsibilities for national and local commissioning.

We responded to the sections of the call for views that are relevant to us and our work:

General questions

- 1. The Policy Memorandum accompanying the Bill describes its purpose as being “to improve the quality and consistency of social work and social care services in Scotland”.**

Question:

Will the Bill, as introduced, be successful in achieving this purpose? If not, why not?

Response:

Scotland Excel supports the overarching aspirations of improving social care services in Scotland, including taking into account the experiences of those accessing services and their families, however there is insufficient detail in the Bill to show how it will improve the quality and consistency of delivered services. Further clarity on the content of Strategic Planning is needed to clearly demonstrate where a National Care Service is better placed to deliver local outcomes than the current model. Good strategic planning should highlight the advantages of having national contracts such as embedding a standardised approach to ethical commissioning and procurement in Fair Work, sustainability, financial transparency, and oversight of the market. The introduction of financial and regulatory impact assessments may help to address this within policy and practice as part of the secondary legislation, as set out at section 12 of the Financial Memorandum.

2. Is the Bill the best way to improve the quality and consistency of social work and social care services? If not, what alternative approach should be taken?

Question:

Is the Bill the best way to improve the quality and consistency of social work and social care services? If not, what alternative approach should be taken?

Response:

Scotland Excel welcomes that services will continue to be planned, designed and delivered locally through care boards and remains fully supportive of further improvements being made to social care services in Scotland. This should continue to build on the good work that has already been established in national procurement and commissioning by Scotland Excel and local commissioners and providers. This approach provides benefits such as national ethical standards, terms and conditions, and national market oversight and accountability to the sector.

With ongoing support from Scottish Government, Scotland Excel can build on the success of the current model. The recent Scottish Government Procurement and Property Directorate (SPPD) report on 'Key Stakeholder Survey & Independent Assessment with Recommendations to Support Planning for the Future', published in May 2021 (by Proxima), indicated that a positive theme from the interviews carried out with included "the work (Scotland) Excel are doing in managing the critically important category of Social Care."

There are a number of national arrangements in place, developed and managed by Scotland Excel, which adopt collaboration principles and sustainable rates. This has increased transparency regarding the fee structures and allows the appropriate level of focus on delivering effective outcomes to people accessing services.

Strategic Plans should continue to drive sustainable rates in service delivery and explore the opportunity to standardise costs.

3. Are there specific aspects of the Bill which you disagree with or that you would like to see amended?

Question:

Are there specific aspects of the Bill which you disagree with or that you would like to see amended?

Response:

A change as significant as the implementation of a National Care Service comes with inherent risks. Sufficient detail must be made available to all parties in consideration of these risks to identify concerns, uncertainties and unintended consequences which the Bill may create.

From a procurement and commissioning perspective – the following would benefit from additional detail as these are core to the national frameworks and contracts which Scotland Excel administers on behalf of local authorities:

1. Section 1 – The National Care Service Principles

Equality, Non-Discrimination and Human Rights

Equalities and a Human-Rights based approach are essential considerations in commissioned arrangements for care services. These are noted under the principles of the National Care Service, but further detail is not provided in the Bill.

Fair Work

For some time, even prior to the publication of the Scottish Government policy note on fair Work First implementation (SPPN 3/2021), Scotland Excel has worked hard to incorporate and champion Fair Working Practices into nationally commissioned arrangements. The Bill notes the “National Care Service is to be an exemplar in its approach to fair work”. However, there is no further detail provided.

Scotland Excel is ideally placed to provide input and advise on this matter.

2. Section 13 – ‘Independent Advocacy’

Connected to Equality, Non-Discrimination and Human Rights is ensuring that the voices of those accessing and using services are championed.

Further detail pursuant to the definition and proposed regulation of independent advocacy would be useful. Especially where this may seek to refine, or redefine guidance given to commissioners previously (such as through the Independent Advocacy Guidance for Commissioners published by Scottish Government in 2013).

3. Section 25 – ‘Support for Other Activities’

Further detail in relation to the section referred to as “support for other activities” would be beneficial. In particular, how funding in this manner is distinct from arrangements which would be subject to the Subsidy Control Act 2022 and Procurement Reform (Scotland) Act 2014 and associated regulations.

4. Section 10 – ‘Meaning of ethical commissioning’

Scotland Excel highlights there are some concerns in relation to the implementation of ethical commissioning. These are addressed in the response to Question 11.

4. Is there anything you would like to see included in the Bill and is anything missing?

Question:

Is there anything you would like to see included in the Bill and is anything missing?

Response:

The Bill is silent on the elements of commissioning that will be delivered locally and/or nationally and, this will have implications for those currently involved in this work. Furthermore, there is a lack of clarity on how this is linked to current and planned legislation. There is also a lack of detail regarding the future governance models and how they relate to the current robust governance already in place.

To contextualise this, as the centre of procurement expertise for the local government sector, Scotland Excel currently has responsibility and ownership for a number of national arrangements, including:

- Secure care
- Fostering and continuing care
- Children's residential care and education (including day education)
- Community meals
- Telecare and telehealth
- Social care case management software systems
- Care and support (including both care at home and supported living services)
- Care homes for adults with learning disabilities (including autism)
- The National Care Home Contract
- Social care agency workers

Further clarity is also required on the scope and remit of the National Care Service, local care boards and special care boards in relation to establishing and using procurement and commissioning arrangements. In particular:

1. The interaction between the National Care Service, care and special care boards and local authorities regarding the commissioning and procurement of services; and
2. Whether the National Care Service and / or care or special care boards will be wholly responsible for:
 - a. Establishing contractual arrangements on their own behalf; and/ or
 - b. Calling off contracts from nationally established frameworks (such as those listed above which are provided by Scotland Excel).

5. Future Secondary Legislation. The Scottish Government proposes that the details of many aspects of the proposed National Care Service will be outlined in future secondary legislation rather than being included in the Bill itself

Questions:

Do you have any comments on this approach?

Are there any aspects of the Bill where you would like to have seen more detail in the Bill itself?

Response:

For the current National Care Service Bill to be competent, it must contain:

- A clear indication of how commissioning will be delivered both nationally and locally
- A statement on roles and responsibilities at a local and national level
- Visibility of the governance model to be implemented
- A clear indication of how the impact on the current workforce will be managed, and in particular, those that are involved in the commissioning of services

These elements must be addressed in the primary legislation.

To contextualise this, as the centre of procurement expertise for the local government sector, Scotland Excel currently has responsibility and ownership for a number of national arrangements, including:

- Secure care
- Fostering and continuing care
- Children's residential care and education (including day education)
- Community meals
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- Social care case management software systems
- Care and support (including both care at home and supported living services)
- Care homes for adults with learning disabilities (including autism)
- The National Care Home Contract

Social care agency workers

The contracting model in place facilitates the delivery of collaborative solutions, underpinned by a robust governance model. It is also worth noting that Scotland Excel is governed by a Joint Committee of 40 elected members from all Scottish local authorities.

6. Transfer of services to the National Care Service. The Bill proposes to give Scottish Ministers powers to transfer a broad range of social care, social work and community health functions to the National Care Service using future secondary legislation.

Question:

Do you have any views about the services that may or may not be included in the National Care Service, either now or in the future?

Response:

Scotland Excel believes that Children's Services should remain within local authorities remit, as per our response to question 18. However, whether included within the NCS or remaining with local authorities, there is a place for national commissioning that can deliver benefits across different social care services.

In relation to national commissioning and procurement, further clarity on some of the key overarching considerations is required before detailed plans are concluded. Many of these relate to the proposed change in the role that Scotland Excel plays.

National social care contracts are currently delivered by Scotland Excel in line with best practice, which supports the principles set out in the Feeley Review recommendations in addition to ensuring compliance with procurement legislation. Retaining social care commissioning within Scotland Excel is key to ensuring ongoing best practice and maintaining high standards.

Scotland Excel develops and manages collaborative arrangements worth circa. £2bn per annum on behalf of local authorities, health & social care partnerships, housing associations and other third sector associate members. For more than 10 years this portfolio has included national social care arrangements delivered by Scotland Excel in collaboration with the wider sector. National social care commissioning is now a key strategic function for Scotland Excel, covering both adult social care and children's services.

We have a dedicated social care section, comprising three specialist teams staffed by skilled and experienced social care commissioners, supported by other professional disciplines and governance arrangements. Scotland Excel has developed the skills and knowledge to offer expert stakeholder engagement and collaboration across complex stakeholder groups.

Scotland Excel has responsibility for national commissioning and procurement activity in relation to:

- Secure care
- Fostering and continuing care
- Children's residential care and education (including day education)
- Community meals
- Telecare and telehealth
- Social care case management software systems
- Care and support (including both care at home and supported living services)

- Care homes for adults with learning disabilities (including autism)
- The National Care Home Contract
- Social care agency workers

The success of the children's residential framework is demonstrated by recent data which indicates that an average of 1,800 placements are in place each quarter, with a corresponding spend of over £127 million each year. This framework agreement offers providers a simplified route to contracting with local authorities and ensures an appropriate level of clarity and consistency through standardised terms and conditions, reporting requirements and placement processes. The national children's residential framework also supports the sharing of information and joined up decision making at a national level.

Scotland Excel has built on the success of the children's services contracts by introducing contracts for adult social care services in response to changing policy direction and Scottish Government requirements.

The first national care home contract for adults with learning disabilities was developed by Scotland Excel in collaboration with partners. This responded to the requirement for a national solution which was identified and recommended in 2013 within The Keys to Life, Scotland's learning disability strategy. This framework is now well established with participation from 31 purchasing authorities and 23 providers offering 55 services. This arrangement provides a critical service for people requiring residential care, as well as supporting people to move on to independent living, where possible.

Our experience in social care markets prompted COSLA's request for Scotland Excel's support in their annual negotiations on the cost of older people's residential and nursing care in 2012. In partnership with COSLA, authorities and provider representative bodies, Scotland Excel subsequently led the development of a care home cost model to provide an evidence-based approach to discussion on costs. This approach was welcomed by the Competition and Markets Authority (CMA) in their 'Care Homes Market Study' report published in 2017 which recognised the steps taken in Scotland to address concerns in the care home market through the cost model work.

Scotland Excel now undertakes the lead role in the development and management of The National Care Home Contract (NCHC), having taken over this lead role from COSLA in 2018.

While the cost of care model has been created and adapted, further discussions are required to secure the full use of this model to identify care home costs. As the current model was devised in 2013, there is a need to redesign the NCHC to embrace current approaches to social care.

Scotland Excel is working collaboratively to achieve this. This unique contract will be redesigned with active support from local government and Scottish Government representatives, and will also include care home representative groups and unions, as well as carer representatives and independent advocacy to secure the views and wishes of residents. This fully collaborative approach will create a contract that has residents, their rights, their needs, and their wellbeing at its heart, and will maximise the sustainability of the sector.

In 2020, Scotland Excel was commissioned by Scottish Government to develop a national solution for care and support services which was reflective of best practice, particularly in relation to service sustainability. This work embedded fair work principles and enables ongoing participation from new entrants and services to provide consistency and stability for people using services. Criteria for

participation in this framework is based on service quality and financial transparency. The framework currently has 119 providers offering 460 services.

The framework facilitates the detailed involvement of people who require care and support services and, can be tailored to meet the individual needs of people requiring support through Self Directed Support (SDS). As a recent example of this, SDS service users were involved in an evaluation process to choose a provider for a housing support complex.

Good practice examples such as this demonstrate the flexibility that well-crafted national procurement and commissioning arrangements can provide. Successful models can be further developed to ensure that national frameworks are used to best effect throughout their lifetime where they are the most appropriate option for meeting service user needs. As such, it is our view that national commissioning should continue to be delivered by Scotland Excel.

7. Do you have any general comments on financial implications of the Bill and the proposed creation of a National Care Service for the long-term funding of social care, social work and community healthcare?

Question:

Do you have any general comments on financial implications of the Bill and the proposed creation of a National Care Service for the long-term funding of social care, social work and community healthcare?

Response:

Local authority contracting and commissioning has been focussing on the localising of services and the support of Small to Medium Enterprises (SMEs) for some time. Currently, c.70% of care providers commissioned by Scotland Excel are SME's.

Scotland Excel has supported this objective by ensuring that our portfolio of national contracts is flexible and accessible to all interested parties – regardless of size. This has promoted broad contractual coverage and flexibility for our contracts to meet the requirements of a given local authority.

As the procurement and commissioning of services moves away from local authorities and into care boards, it will be necessary to plan carefully for these services. In particular, there will be a need to be fair and equitable whilst still acknowledging local differences/ requirements.

The intersection of these national or wider care board arrangements must also remain connected with existing local authority structures – such as Housing and Education Services etc.

There may be financial implications in the change/loss of traction on other projects/work in relation to service improvement within these structures.

Scotland Excel has recognised this risk and worked extensively with a broad representation of stakeholders to ensure our national contracts augment and support, not detract from, local arrangements and services.

Financial Memorandum questions

Question:

- 1. Did you take part in any consultation exercise preceding the Bill and, if so, did you comment on the financial assumptions made?**

Response:

Yes, we participated in the consultation, but did not comment on the financial assumptions.

Question:

- 2. If applicable, do you believe your comments on the financial assumptions have been accurately reflected in the financial memorandum (FM)?**

Response:

N/A

Question:

- 3. Did you have sufficient time to contribute to the consultation exercise?**

Response:

No.

Question:

- 4. If the Bill has any financial implications for you or your organisation, do you believe that they have been accurately reflected in the FM? If not, please provide details.**

Response:

The financial implications and methodology employed to outline these have not been adequately detailed.

Specifically, clarity should be provided regarding the financial implications of:

- Staffing costs in alignment with TUPE requirements
- Staffing costs where TUPE is only partially applicable
- Multiple local commissioning exercises in the event that there is a migration from national commissioning

The Bill is silent on the additional cost associated with redesigning the commissioning model. Retaining Scotland Excel's role would avoid the expense and resource requirements necessary to set up a new commissioning team, which would require a significant initial investment as well as ongoing costs. Utilising existing structures would also avoid any unintended loss of skill and learning.

Question:

5. Do you consider that the estimated costs and savings set out in the FM are reasonable and accurate? Please provide your response in the box provided.

Response:

There appears to be limited detail within the information on the cost associated with the creation and development of the NCS. Whilst this is unknown at present, the work around the NCS would clearly require input from many sources in local government.

Whilst this work is ongoing, there does not appear to be an allowance for work not being completed or prioritised during this time. It is likely that some local authority and national projects are not prioritised because of this as there is no additional allocation of resource to "backfill" any positions that work on the NCS delivery, e.g. co-design work

Question:

6. If applicable, are you content that your organisation can meet any financial costs that it might incur as a result of the Bill? If not, how do you think these costs should be met?

Response:

No

The Bill raises questions and requires clarity regarding the future role of Scotland Excel in relation to social care procurement and commissioning. As such, it is difficult to determine the precise cost to the organisation from the implementation of the NCS.

The current cost of additional resource in continuing to meet business as usual requirements in contract development and framework management are being met by Scotland Excel while the organisation provides input to all parties in respect of potential developments.

Question:

7. Does the FM accurately reflect the margins of uncertainty associated with the Bill's estimated costs and with the timescales over which they would be expected to arise?

Response:

No

Questions on specific provisions

Section 1 defines the National Care Service principles.

Question:

In providing comments on this section of the Bill, please consider:

- Whether you agree with these principles as drafted?
- Whether there is anything in the principles you would disagree with or wish to amend?
- Whether there is anything important missing from these principles?
- Whether an alternative approach would be preferable?

Response:

From a procurement and commissioning perspective, the National Care Service principles largely build on or embed well-established statutory or Best Practice requirements.

These are areas which Scotland Excel champions and has included in the development of its portfolio of national arrangements and flexible frameworks.

Scotland Excel's approach is based on collaboration with people at the centre of decision making. We work closely with a range of partners involved in the delivery of services such as care practitioners from councils and HSCPs, provider representative and those experienced in the receipt of care.

Further discussion around the following principles is required:

Equality, Non-Discrimination and Human Rights

Equalities and a Human-Rights based approach are essential considerations in commissioned arrangements for care services. These are noted under the principles of the National Care Service, but further detail is not provided in the Bill.

The intersection of the Bill with the Public Sector Equality Duty and Fairer Scotland Duty in particular would be beneficial in regard to the roles and responsibilities of parties in how any transition brought about by the NCS would be managed.

Fair Work

Scotland Excel has incorporated and championed Fair Working Practices and Fair Work First (SPPN 3/2021) into nationally commissioned arrangements. The Bill notes the "National Care Service is to be an exemplar in its approach to fair work". Further discussions around this is required.

Scotland Excel is well placed to provide input and advise on this matter.

The strategic planning and ethical commissioning provisions (Chapter 2).

This Chapter of the Bill requires care boards to have a strategic plan setting out their vision, objectives and budgets for their care board area and incorporating an ethical commissioning strategy. Scottish Ministers must also have a strategic plan and an ethical commissioning strategy for any services provided at the national level.

The Policy Memorandum states that ethical commissioning strategies should set out “arrangements for providing services and how those arrangements have been designed to ensure they best reflect the NCS principles”.

Question:

In providing comments on this chapter of the Bill, please consider:

- **Whether you agree with these provisions?**
- **Whether there is anything important missing from this chapter of the Bill?**
- **Whether there is anything you would disagree with or there are amendments you would wish to propose to this chapter of the Bill?**
- **Whether an alternative approach would be preferable?**

Response:

Ethical Commissioning Strategies

Scotland Excel agrees that ethical commissioning strategies must have a person-centred care first/human rights approach at its core, ensuring that strategies focus on high quality care and that these ethical commissioning strategies should be consulted on.

However, Scotland Excel believes that these approaches have been in place for a number of years at both a regional and national level. In particular, Fair Work First has been embedded within Scotland Excel’s procurement processes and the arrangements delivered. Best practice and innovative solutions are being delivered and these existing structures should be the basis upon which ethical commissioning strategies are built.

Scotland Excel believes that some of the current issues relating to commissioning and procurement practice can be addressed by empowering more commissioners to utilise the full flexibility provided by the current legislation. This can be used as an enabler for more activity to be undertaken in

innovative and collaborative ways, ensuring that ethical practices are embedded within both strategies and processes. This could be done through existing structures or planned care boards, however it is critically important for Scottish Government to recognise the context in which current procurement and commissioning decisions are made; the key drivers for current practices include the extent to which limited budgets drive current practice and the complex nature of this landscape.

Good social care procurement and commissioning drives improvement and helps to embed change to support wider policy goals when it focuses on quality as the main determinant of best value and is delivered by skilled and specialist professionals. The organisation which undertakes the national activity must have the experience and capability specific to this complex and important task. Scotland Excel has successfully undertaken this role for more than ten years and we remain committed to delivering further improvements in procurement and commissioning practice.

National social care contracts are currently delivered by Scotland Excel in line with best practice which supports the principles set out in the Feeley Review recommendations as well as ensuring compliance with procurement legislation. Our solutions aim to maximise choice for those who use services, utilising the scope provided by the 'light touch' procurement regime to deliver 'flexible' frameworks without limiting provider participation and are sufficiently agile to respond quickly to changing circumstances and demands. Delivering these frameworks at a national level delivers efficiencies in terms of time and resource, to both commissioners and providers, whilst providing effective solutions and ensuring all projects are delivered in line with ethical commissioning principles.

These are not competitive exercises, but focus on an approach which ensures that all providers have an opportunity to participate in delivery of public services through a fair and transparent process. It also ensures that services meet Scottish Government objectives for a human-rights based approach, with the person receiving care at the centre, and a workforce receiving fair work commitments.

Our arrangements support tailored local commissioning and person-centred decision making while enabling an appropriate degree of standardisation and quality provision. Single contracts can be agreed in line with the preference of a self-directed support (SDS) recipient as well as agreeing multiple packages of support for people with similar needs.

Roles and Responsibilities

From a Scotland Excel perspective, it would be beneficial to have greater clarity over Scottish Governments intentions in relation to the implementation and management of national and regional contracts as this will have a considerable impact on the day-to-day operations of Scotland Excel. For example, whether care boards will have the authority to contract/commission services or whether another organisation/body will have this within its remit.

Scotland Excel understands from the draft Bill that the focus of care boards should be on the delivery of local services. However, there is also opportunity and evidence for some services to be commissioned or procured on a regional or national scale. This would allow care boards to focus on local enhancements and direction, building capacity to identify and deliver to local requirements.

Scotland Excel notes the absence of detailed roles and responsibilities in relation to national or regional commissioning from the Bill. Without an accurate description of roles, respondents may not have a clear understanding of where the relevant skills and experience reside when considering

whether the Bill sets out provisions appropriately. It is vital that Scottish Government understands the landscape and takes this into account when determining future direction.

With such a significant proportion of social care services externally commissioned, the risk of not carefully considering the future of commissioning arrangements cannot be overstated. Social care commissioning is a unique and specialist profession and requires a clear understanding of the complex social care markets in Scotland.

Scotland Excel has significant experience in undertaking a wide spectrum of social care commissioning work. We have the benefit of years of learning and our multi-disciplinary specialist teams include appropriate expertise and support structures. This has enabled the development of links with key stakeholders such as provider representative groups, local commissioners and social work teams. Scotland Excel is best placed to continue in this role and would be able to use these skills to undertake national exercises in the other areas.

Understanding where and how national solutions can add value is a skill that Scotland Excel has developed from more than a decade's experience. Scotland Excel's national activity, both in social care contracts and other work (such as the Early Learning and Childcare (ELC) work seeks to support local commissioning and person-centred decision making, not to impose rigid structures. Through close partnership working with the local government sector Scotland Excel understands the importance of local intelligence, contract monitoring and data gathering. Scotland Excel's services reflect these important considerations with individual authorities accessing different services to varying degrees, dependant on their specific circumstances.

Good commissioning and procurement activity can help drive change and embed policy which supports improvement. It is critically important to understand the current system and the drivers behind current practice before detailed improvement plans can be fully considered. Scotland Excel is well-placed to support this work.

Structure of Standards and Process

Scotland Excel adopts various procurement approaches tailored to fit the situation and circumstances at play in each market and for each requirement and has experience in supporting local commissioning through provision of tools and guidance. The organisation is therefore well placed to be involved in the co-design to develop the Structure of Standards and Process.

To support the roll out of standards and processes developed and agreed collaboratively, there must also be agreement to develop associated training, and Scotland Excel is well placed to undertake this. Our expertise in social care commissioning, combined with our experience in improving procurement practice, undertaking transformation programmes and providing high quality learning via the Scotland Excel Academy, provides a unique position to offer this training and support for commissioners. This could also be collaboratively developed to support commissioners to make full use of the flexibility afforded by procurement legislation for social care. There are clear synergies gained by having this work delivered by the one organisation.

Scotland Excel has been undertaking the lead role in establishing and managing national social care contracts in Scotland for over 10 years. As such, we would welcome further discussion on the role of the organisation in the future.

Granting powers to Ministers to intervene with respect to care boards and contractors (Chapter 4). Sections 16 to 22 of the Bill establish powers for Ministers to intervene with respect to care boards and contractors, for instance in case of an emergency or of service failure.

Question:

In providing comments on this chapter of the Bill, please consider:

- **Whether you agree with these provisions?**
- **Whether there is anything important missing from this chapter of the Bill?**
- **Whether there is anything you would disagree with or there are amendments you would wish to propose to this chapter of the Bill?**
- **Whether an alternative approach would be preferable?**

Response:

Although the Bill sets out the provisions relating to intervening with respect to a care board or provider, it is unclear from the drafting how these would fit with the function of other bodies, for example the Care Inspectorate. Further information should be provided in relation to the decision-making process to ensure there are no unintended consequences to provisions of this nature.

The Bill outlines that any intervention could only be extended once, and by a period of 6-months or less, however it is unclear if the provider/care boards/NCS would be required to create, maintain and enact a contingency plan should the emergency remain after the period. Greater clarity is required around this to enable effective planning and risk management within care boards.

Inclusion of children’s services and justice services (Section 30). Chapter 6 also makes provision for the inclusion of children’s services and justice services within the scope of the National Care Service at some point in the future, subject to a public consultation on the proposed inclusion of these services. It is proposed that any such inclusion of these services within the scope of the National Care Service would be achieved via secondary legislation.

Question:

In providing comments on this section of the Bill, please consider:

- **Whether you agree with proposals to include children’s services and justice services within the scope of the National Care Service, either now or in the future?**
- **Whether there is anything important missing from this section of the Bill?**
- **Whether there is anything you would disagree with or there are amendments you would wish to propose to this section of the Bill?**
- **Whether an alternative approach would be preferable?**

Response:

Scotland Excel agrees that any inclusion of Children’s services and Justice services should be subject to a further public consultation and welcomes this approach to ensure a balanced and considered approach is taken.

It is our view that children’s services should remain within the remit and ownership of local authorities, maintaining parity with educational services. Scotland Excel develops and manages three national children’s services contracts.

The renewal underway for Children’s Residential services is a third-generation framework, reflecting improvements in each iteration over the past eight years. Local authorities and the Scottish Government use these contracts on a regular basis to supplement in-house services or to meet specialist requirements. These arrangements have been developed collaboratively with stakeholders in recognition of the importance that these services have on the lives of children and young people.

Participation in these contracts is high, with annual expenditure in the region of £130m (13% of all of Scotland’s spend on Children & Families social work services and over 48% of the net revenue expenditure for services purchased or provided directly by local authorities on accommodation-based

services¹), but it has taken many years for all stakeholders to recognise the benefits of the national arrangements. This evolution of understanding by all parties occurs only with time, experience and collaboration.

By way of example, the success of the national children's residential framework is demonstrated by recent data which indicates that an average of 1,800 placements are made each quarter. This national framework agreement offers providers a simplified route to contracting with local authorities and ensures an appropriate level of clarity and consistency through standardised terms and conditions, reporting requirements and placement processes. The national children's residential framework also supports the sharing of information and joined up decision making at a national level.

Scotland Excel remains in a strong position to facilitate discussion between relevant stakeholders, such as local authorities, providers and their representative bodies. In addition, dialogue continues with a variety of Scottish Government departments, as well as The Promise, on key policy change and improvements, including for children's services and justice services coming within the scope of the National Care Service. Crucially, any national or regional contract can be used to embed change and reflect best practice to help support policy implementation.

Scotland Excel is already working with partners to ensure that national commissioning decisions support the changes required by the Promise while ensuring continuity of current service provision. This includes:

- planning for the transition of children from Young Offenders Institutes into Secure Care centres;
- forecasting the potential changes resulting from a reduction in cross-border placements;
- ensuring the voice and views of children and young people are central to service design; and
- co-producing solutions which meet the needs and expectations of all stakeholders.

¹ Based on 2020-21 LFR 03: Social Work return for Scotland.

**Reserved right to participate in certain contracts (Section 41).
Section 41 of the Bill proposes amendments to the Public
Contracts (Scotland) Regulations 2015 to allow the right to bid for
contracts for certain services to be reserved to certain types of
organisation.**

Question:

In providing comments on this section of the Bill, please consider:

- **Whether you agree with the proposed amendments to the Public Contracts (Scotland) Regulations 2015?**
- **Whether there is anything important missing from this section of the Bill?**
- **Whether there is anything you would disagree with or there are amendments you would wish to propose to this section of the Bill?
Whether an alternative approach would be preferable?**

Response:

Further detail as to how Section 41 will work in practice is required. Most notably, the maximum term of contract which is 3 years but in the new regulation it is 5 years, which notes that an organisation is a qualifying organisation if, “the organisation has not been awarded, pursuant to this regulation, a contract for the services concerned by the contracting authority concerned within the past 3 years.” The drafting of the Bill is unclear as to the duration of a reserved contract. For example, if a provider was successful for a reserved contract, and the contract term was 5 years, it is unclear whether the renewal contract (for the same services) could also be let as a reserved contract. Refer to 41.5(d) ‘the organisation has not been awarded, pursuant to this regulation, a contract for the services concerned by the contracting authority concerned within the past 3 years, would have been met or whether this 3-year time period is from the point of the renewal contract being let.’ Clarity on this is required to understand the intention of the draft as to the length of reserved contracts.

Reserving contracts may constrain some elements of the market and discourage new providers from entering the care sector. The risks associated with this requires careful consideration to effectively respond to wider policy directives such as hospital discharges and the care sector workforce challenges.