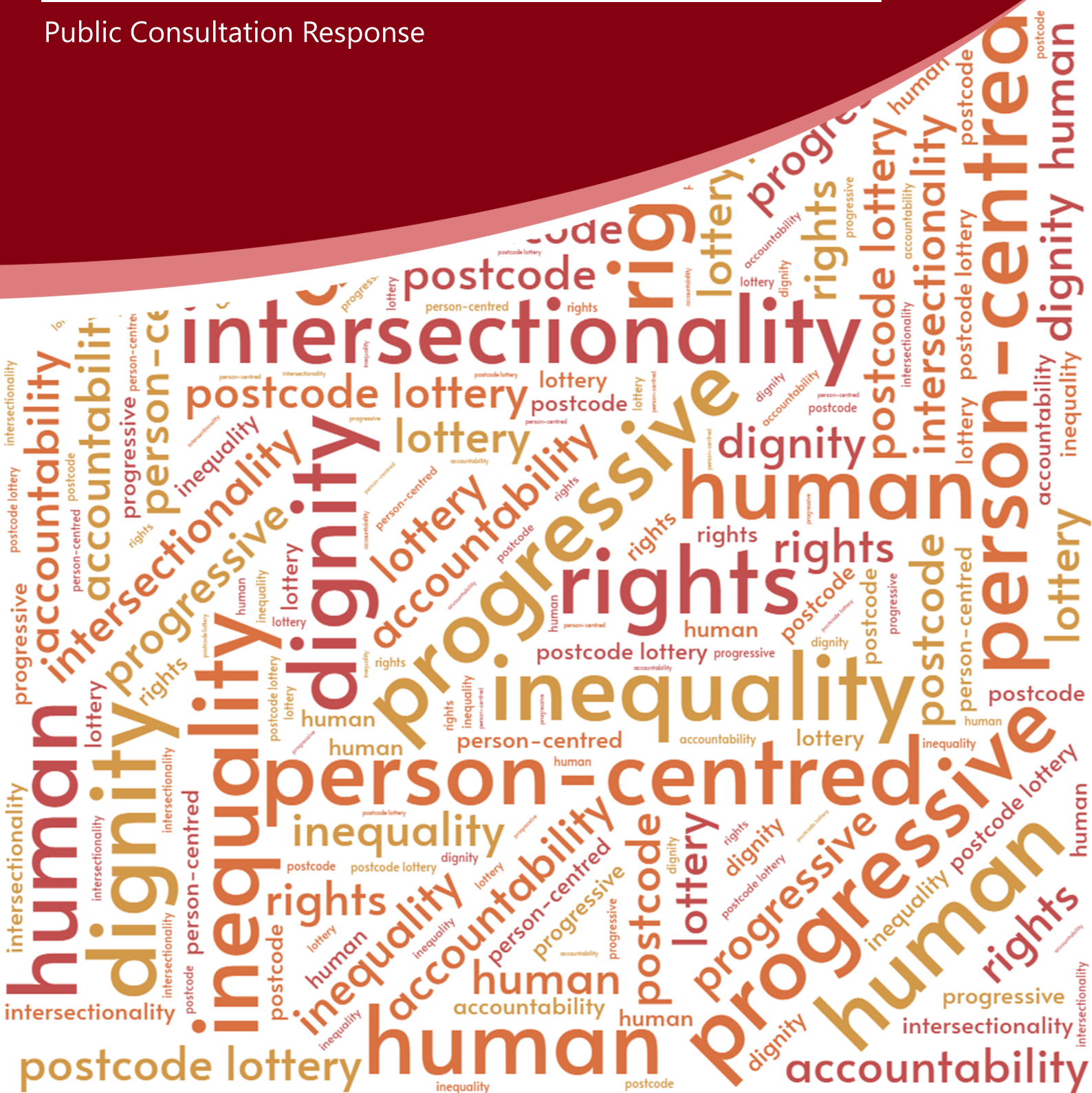


National Care Service (Scotland) Bill

Public Consultation Response





CEMVO Scotland is a national intermediary organisation and strategic partner of the Scottish Government Equality Unit. Our aim is to build the capacity and sustainability of the ethnic minority (EM) voluntary sector and its communities. Since being established in 2003, we have developed a database network of over 600 ethnic minority voluntary sector organisations throughout Scotland to which we deliver a wide range of programmes that provide capacity building support to the sector.

As a national organisation, we continually engage with the EM voluntary sector and its communities, which enable us to gather intelligence about the needs and issues affecting the sector. This helps our organisation to deliver tailored support to the sector, and to work strategically with public, statutory, and government agencies to tackle a range of prevalent issues such as race equality, social inclusion, capacity building and civic participation.

One of our core programmes at CEMVO Scotland is Race for Human Rights. The aim of this programme is to help public service providers increasingly embed race equality and human rights in their strategic planning and day-to-day functions. This will be achieved by adopting an anti-racist and human rights-based approach.

This publication is in response to the Scottish Government's public consultation on its proposals of a National Care Service, submitted in August 2022.

You can also access this document on the Scottish Parliament website, [Published responses for National Care Service \(Scotland\) Bill \(Detailed\) - Scottish Parliament - Citizen Space.](#)

Our Human Rights Officer, Clare Gallagher, also gave evidence at the Health, Social Care and Sport Committee in December 2022. You can watch the evidence session at [Health, Social Care and Sport Committee - 5 December 2022](#) or read the final report at [Official Report \(parliament.scot\).](#)

General questions about the Bill

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”. Will the Bill, as introduced, be successful in achieving this purpose? If not, why not? Please provide your response in the box provided:

CEMVO Scotland are disappointed that this Bill, which is to improve the care of the people of Scotland, does not take a person-centred approach. The impact of this is that there is no legal obligation on duty-bearers or the state to respect human dignity in the implementation of this legislation. The National Care Service Bill had the opportunity to continue Scotland’s legacy of world-leading, progressive legislation such as the Social Security Act 2018(SSS) and the Self-Directed Support Act 2013(SDS). These recent pieces of legislation have been heralded as progressive in the human rights sphere as it puts dignity and human rights at the heart of it (Section 1d of SSS and Section 2a of SDS). The value of including dignity within the Bill is not to be underestimated, it is the guiding principle of interpretation of human rights law and without it our human rights are at risk of being violated. The purpose of the NCS Bill is to improve the realisation of rights of those who are receiving or giving care. Our legislation is our safety net, and if the legislation does not have dignity at it’s heart, there is no protection or accountability. While CEMVO Scotland welcomes the extensive Policy Memorandum of this Bill on what this Bill aims to achieve, it is not legally binding and leaves a huge gap in legal protection of human rights.

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? Please provide your response in the box provided.:

As highlighted above, the best way to improve the quality and consistency of social work and social care services is to have human dignity at the heart of the legislation. While the NCS Bill recognises that services provided by this new service is essential to the realisation of human rights, it does not state what rights specifically we are talking about at any point within the Bill. Once again this appears to be a step-backwards in terms of legislation creation in Scotland as both SSS and SDS refer specifically to what right they are protecting, respecting and fulfilling, recognising that human rights are inherently interdependent, inter-connected and indivisible. As stated in the previous paragraph, there is value of being explicit in the legislation, in this instance reference to specific human rights. CEMVO Scotland are concerned that this is a missed opportunity to make this innovative shift to a national care service stand the test of time and protect, respect and fulfill human rights for generations to come, regardless of the

executive of the state. CEMVO Scotland appreciates the enormity of producing a Bill that proposes to change a crucial and fundamental part of Scottish society, executed well the National Care Service could address one of the key failures of current state provided care and gap in human rights protection: the postcode lottery. The postcode lottery is a phrase coined to demonstrate that the type of care, the standard of care and the protection of your human rights is dependable on where you live in Scotland. As this Bill proposes to move finances and resources and responsibility from local governance to Scottish Ministers, we understand COSLA's concern that there is a real risk that Scottish Ministers may not be aware of the specific needs of differing communities, meaning that the needs of the people are not met. However, if legislation is met with meaningful community engagement, staff training, suitable accountability measures, community empowerment (a HRBA), the National Care Service could truly transform the lives of those receiving and giving care in Scotland.

**Is there anything additional you would like to see included in the Bill and is anything missing?
Please provide your response in the box provided.:**

For reasons highlighted above, Section 1 should have explicit recognition of human dignity. There should also be reference to specific rights that this Bill will better protect, respect and fulfill.

Future secondary legislation

Please provide your response in the box provided:

CEMVO Scotland are concerned that this could be a missed opportunity for truly transforming those who receive and give care in Scotland. Most of the detailed aspects are what truly impact those most marginalised and vulnerable and leaving it to secondary legislation subjects it to future executive of state interpretation.

Impact assessments

Please provide your response in the box provided.:

The Business and regulatory impact assessment does not mention United Nations Guiding Principles on Business and Human Rights of which Scotland has voluntarily pledged their commitment to. It is of the view of CEMVO Scotland that 'Ethical commissioning' is not enough to ensure the protection of human rights and non-discrimination, as it is highly subjective. Furthermore, ethical commissioning is not a new concept and has been used by business and governments for many years now however it's success rate in ensuring there is no violation of rights through commissioning/procurement is low, in fact this area of procurement and commissioning out public services is one of the biggest gaps in human rights protection in the

21st century. Finally, it is disappointing that there is no human rights budgeting being explored for NCS bill or business impact assessment despite the vast research and case studies provided by the Scottish Human Rights Commission. This budgeting tool helps track and monitor human rights violations and realisation which should be at the heart of a Bill that's aim is to provide better and more fair care services to those who need it.

CEMVO Scotland are concerned that there is no transparency on how the equality impact assessments were carried out (i.e their guidance framework). We are also concerned that there was no recognition intersectionality within the impact assessment. Furthermore, CEMVO Scotland are very disappointed that the Scottish Government have not taken this opportunity to improve their data collection to truly understand the experience of ethnic minority communities in health and social care. Instead the statement simply read 'Due to limitations in the data it is not possible to draw conclusions on use of health and social care services by ethnic minority groups'. This diminishes the importance of this data despite the fact that it is the Scottish Government's legal obligation to gather this data to better protect, respect and fulfil the rights of ethnic minority communities. While we recognise that there is limited data readily available as it stands, this would've been a prime opportunity to improve data collection process with EM communities as without it their voices and experiences will not be heard and their human rights remain at risk.

CEMVO Scotland is disappointed that there is no human rights impact assessment completed for the NCS Bill, this could be incorporated into the Equality Impact Assessment as suggested by the Scottish Human Rights Commission. CEMVO Scotland share the same belief as the Scottish Human Rights Commission that Equality and Human Rights Impact Assessments are 'important mechanisms for enabling equality and human rights considerations to be embedded into the policies, practices, procedures and priorities of both government and public bodies in Scotland'. It is vital that the Scottish Government show leadership in using these tools to further protect, respect and fulfil their human rights obligations so that duty-bearers follow suit. Finally, it is confusing that there is a children's rights and wellbeing assessment at this stage of the process when children services and justice are not included in the bill. While Children's Rights and wellbeing assessments are vital, it is disappointed that those who will be immediately affected by this new legislation were not included in such assessment, such as a human rights and wellbeing assessment or an Equality and Human Rights Impact Assessment.

Accountability to Scottish Ministers (Sections 2 and 3)

Please provide your comments on Scottish Ministers' overarching responsibilities for the National Care Service in the box provided.

CEMVO Scotland appreciates the enormity of producing a Bill that proposes to change a crucial and fundamental part of Scottish society, executed well the National Care Service could address one of the key failures of current state provided care and gap in human rights protection: the postcode lottery. The postcode lottery is a phrase coined to demonstrate that the type of care,

the standard of care and the protection of your human rights is dependable on where you live in Scotland. As this Bill proposes to move finances and resources and responsibility from local governance to Scottish Ministers, we understand COSLA's concern that there is a real risk that Scottish Ministers may not be aware of the specific needs of differing communities, meaning that the needs of the people are not met. However, if legislation is met with meaningful community engagement, staff training, suitable accountability measures, community empowerment (a Human Rights Based Approach), the National Care Service could truly transform the lives of those receiving and giving care in Scotland.

Strategic planning and ethical commissioning (Chapter 2)

Please provide your comments on this part of the Bill in the box provided. use text box below:

It is of the view of CEMVO Scotland that 'Ethical commissioning' is not enough to ensure the protection of human rights and non-discrimination, as it is highly subjective. Furthermore, ethical commissioning is not a new concept and has been used by business and governments for many years now however it's success rate in ensuring there is no violation of rights through commissioning/procurement is low, in fact this area of procurement and commissioning out public services is one of the biggest gaps in human rights protection in the 21st century. Finally, it is disappointing that there is no human rights budgeting being explored for NCS bill or business impact assessment despite the vast research and case studies provided by the Scottish Human Rights Commission. This budgeting tool helps track and monitor human rights violations and realisation which should be at the heart of a Bill that's aim is to provide better and more fair care services to those who need it.

Independent advocacy (Section 13)

Please provide your comments on this section of the Bill in the box provided. text box below:

CEMVO Scotland welcomes the inclusion of independent advocacy within the NCS Bill.

Complaints (Sections 14 and 15)

Please provide your comments on these sections of the Bill in the box provided.

CEMVO Scotland welcome the improvement of the complaint process, especially working with those who have lived experience to help design the new service.

Inclusion of children's services and justice services (Section 30) Please provide your comments on this section of the Bill in the box provided.

To ensure that there is just transition from child to adult services, both children services and justice services should fall under the scope of the NCS.

Health and social care information (Part 2)

Please provide your comments on this section of the Bill in the box provided:

For the impact of this proposal to be positive, the Scottish Government should ensure that they are fully transparent on what information is shared and commit to a public information campaign to empower people to know where their information is and how it is used/shared.

Reserved right to participate in certain contracts (Section 41)

Please provide comments on this section of the Bill in the box provided:

The Scottish Government should ensure that it follows the United Nations Guiding Principles on Business and Human Rights and utilise a human rights budget framework during its public procurement process.