

Item: 5

Special General Meeting of the Council: 15 September 2021.

Notice of Motion.

Joint Report by Chief Executive and Chief Officer / Executive Director, Orkney Health and Care.

1. Purpose of Report

To consider the implications of the suggested course of action contained in the Notice of Motion, lodged by Councillor James Stockan, as detailed on the agenda for this meeting.

2. Recommendations

The Council is invited to note:

2.1.

That the Chief Executive has received a Notice of Motion in relation to the Scottish Government's plans to begin legislating for a new National Care Service by Autumn 2021.

2.2.

That the Notice of Motion requests that the Council resolve, as a matter of priority, to write to the Cabinet Secretary for Health and Social Care seeking confirmation that a full island communities impact assessment will be undertaken, as required by the Islands (Scotland) Act 2018, before any legislation is drafted.

2.3.

That the Scottish Government has meantime launched a consultation on its proposals for a National Care Service.

2.4.

That the immediate implications of the suggested course of action contained in the Notice of Motion are principally in Councillor and officer time for the petitioning of the Scottish Government.

It is recommended:

2.5.

That the Council consider whether to support the Notice of Motion in that the Council will write to the Cabinet Secretary for Health and Social Care to seek confirmation that a full island communities impact assessment will be undertaken, as required by the Islands (Scotland) Act 2018, before any legislation is drafted.

3. Notice of Motion

3.1.

The Notice of Motion, as detailed on the agenda for this meeting, was lodged on 29 June 2021 in accordance with Standing Order 17.1, and requests that the Council resolve to write as a matter of priority to the Cabinet Secretary for Health and Social Care seeking confirmation that a full island communities impact assessment will be undertaken, as required by the Islands (Scotland) Act 2018, before any legislation is drafted in respect of the proposed new National Care Service.

3.2.

Standing Order 17.2 provides that a Notice of Motion must be received by the Chief Executive at least 14 Clear Days prior to the date of any Meeting of the Council, in order for the Notice of Motion to be included within the business of that Meeting.

3.3.

Standing Order 17.3 states that a Notice of Motion shall be accompanied by a report from the Chief Executive or relevant Executive Director on the implications of any suggested course of action.

4. Background

4.1.

The Notice of Motion refers to the Scottish Government's plans to begin legislating for a new National Care Service in Scotland by Autumn of 2021. Further, on 9 August 2021, after the Notice of Motion had been received, the Scottish Government published a consultation on "A National Care Service for Scotland" to seek the public's views ahead of the creation of a National Care Service:

<https://www.gov.scot/publications/national-care-service-scotland-consultation/>

4.2.

The Scottish Government's consultation on a National Care Service follows on from the Independent Review of Adult Social Care, which was commissioned to recommend improvements to adult social care in Scotland, primarily in terms of the outcomes achieved by and with people who use services, their carers and families, and the experience of people who work in adult social care.

<https://www.gov.scot/publications/independent-review-adult-social-care-scotland/>

The Review took a human-rights based approach and the final report was published in February 2021. It concluded that, whilst there were strengths in Scotland's social care system, it needed revision and redesign to enable a step change in the outcomes for people in receipt of care.

4.3.

The Review provided a number of high-level areas of focus and recommendations including:

- Ensuring that care is person-centred, human rights based and is seen as an investment in society.
- Making Scottish Ministers responsible for the delivery of social care support with the establishment of a National Care Service to deliver and oversee integration, improvement and best practice across health and social care services.
- Changing local Integration Joint Boards to be the delivery arm of the National Care Service, funded directly by and reporting to the Scottish Government.
- The nurturing and strengthening of the workforce.
- Greater recognition and support for unpaid carers.

4.4.

The Scottish Government's current consultation has a focus on exploring suggestions for significant cultural and system change which would need to be supported by primary legislation and new laws to ensure governance and accountability across the system to deliver successfully for people.

4.5.

Significantly, the Scottish Government's consultation has extended the scope of the Review to other service areas including children and families, community justice, alcohol and drug services and social work. Should responsibilities for these services be removed from local government, it would represent the most significant change to local government since local government reorganisation in 1996.

4.6.

The consultation closes on 2 November 2021 and the Scottish Government has intimated that all feedback will be analysed and that conclusions will be used to shape and develop new legislation. A Bill is expected to be introduced in the Scottish Parliament in Summer 2022. The legislation is likely to be extensive and complex and is likely to take at least a year to be scrutinised by Parliament. The Scottish Government has indicated that it intends that a National Care Service will be fully functioning by the end of the parliamentary term in 2026.

5. Islands (Scotland) Act 2018

5.1.

Sections 7, 8, 9 and 13 of the Islands (Scotland) Act 2018 (“the Act”) came into force on 23 December 2020. These provisions place duties on relevant authorities to consider the effects of their policies, strategies and services on island communities (as defined in Section 2 of the Act).

5.2.

Section 7 of the Act states that relevant authorities must have regard to island communities in carrying out their functions. The Scottish Ministers are classed among the ‘relevant authorities’ in the Schedule to the Act.

5.3.

Section 8 of the Act requires relevant authorities to undertake an Island Communities Impact Assessment in relation to a policy, strategy or service, which, in the authority’s opinion, is likely to have an effect on an island community which is significantly different from its effect on other communities (including other island communities) in the area in which the authority exercises its functions. The duty applies to the development, delivery and redevelopment of the policy, strategy or service (as the case may be).

5.4.

In terms of Section 8 of the Act, an Island Communities Impact Assessment must describe the likely significant different effect of the policy, strategy or service (as the case may be), and assess the extent to which the authority considers that the policy, strategy or service (as the case may be) can be developed or delivered in such a manner as to improve or mitigate, for island communities, the outcomes resulting from it. If a relevant authority does not prepare an Island Communities Impact Assessment, it must publish, as soon as reasonably practicable afterwards and in such manner as it considers appropriate, an explanation of its reasons for not doing so.

5.5.

In terms of regulations made under Section 9 of the Act, decisions by relevant authorities in relation to Islands Communities Impact Assessments may be the subject of a request for a review.

5.6.

Separately, in terms of Section 13 of the Act, the Scottish Ministers must prepare an Island Communities Impact Assessment in relation to legislation which, in their opinion, is likely to have an effect on an island community which is significantly different from its effect on other communities (including other island communities) in Scotland. Such an Island Communities Impact Assessment must:

- Describe the likely significantly different effect of the legislation.
- Assess the extent to which the Scottish Ministers consider that the legislation can be developed in such a manner as to improve or mitigate, for island communities, the outcomes resulting from the legislation.
- Set out the financial implications of such steps taken to mitigate, for island communities, the outcomes resulting from the legislation.

5.7.

In terms of Section 13 of the Act, an Island Communities Impact Assessment under that section is taken to be an Island Communities Impact Assessment under Section 8 in relation to the policy, strategy or service of the Scottish Ministers to be implemented by the legislation.

6. Assessment of Implications of Notice of Motion

6.1.

The Council and its partners have invested significantly in the provision of care services over many years. The Council recognises that review and reform are often necessary in order to improve outcomes. However, it is important to recognise that a National Care Service might not be the only means of reform and that it should not necessarily be accepted without proper consideration of its scope or of any local implications that might arise from more centralised resourcing and decision making. Supporting the Notice of Motion will ensure that the Scottish Government is put on notice in respect of its statutory obligations, in particular, its obligation to prepare an Island Communities Impact Assessment if it reasonably considers that the legislation, as proposed, would be likely to have an effect on Orkney, or any island community within Orkney, which is significantly different from its effect on other communities (including other island communities).

6.2.

As it is the Scottish Ministers who would have to form the opinion that the proposed legislation is likely to have an effect on island communities which is significantly different from other communities, it would be in Orkney's interests for the Council to make a representation to the Scottish Ministers in the terms set out in the Notice of Motion, and thereby seek to persuade the Scottish Ministers that an Island Communities Impact Assessment requires to be undertaken.

6.3.

Writing to the Cabinet Secretary in the terms suggested in the Notice of Motion would also help to ensure that, if the Scottish Ministers did not carry out an Island Communities Impact Assessment, they would at least be obliged to publish their reasons for not doing so, in terms of Section 8 of the Act.

6.4.

Subordinate legislation has been passed regulating, among other things, the review process relating to decisions of relevant authorities concerning Island Communities Impact Assessments. The Island Communities Impact Assessments (Publication and Review of Decisions) (Scotland) Regulations 2020 confirm that, in prescribed circumstances, a review of a relevant authority's decision relating to an Island Communities Impact Assessment may be requested by an "applicant". In such circumstances, the applicant must demonstrate that they have been directly affected (or are likely to be directly affected) by a given policy, strategy or service. The Council may be able to make use of this process in the future.

6.5.

In addition, by calling on the Scottish Ministers to carry out an Island Communities Impact Assessment, the Council would give itself time to consider whether to make a request for a devolution of functions in terms of Section 15 of the Act or a request for additional powers in terms of Section 21 of the Act. Section 15 envisage regulations being passed by Scottish Ministers to establish a scheme for local authorities to request a devolution of functions while regulations to allow local authorities to request additional powers have already been passed under Section 21 of the Act.

7. Links to Council Plan

The proposals in this report support and contribute to improved outcomes for communities as outlined in the Council Plan strategic priority theme of Caring Communities, with the target outcome that people in Orkney should enjoy long, healthy and independent lives, with care and support available to those who need it.

8. Links to Local Outcomes Improvement Plan

The proposals in this report support and contribute to improved outcomes for communities as outlined in the Local Outcomes Improvement Plan priority of Strong Communities and Living Well.

9. Financial Implications

The financial implications of the Notice of Motion being accepted by the Council are that staff resources would require to be diverted to communicating with the Scottish Government in the first instance to ensure that an Island Communities Impact Assessment is carried out or, if not, that the reasons for not doing so are published. Further financial costs may be incurred if the Council requests a review of the Scottish Government's decision with regard to this, or if the Council submits a devolved functions request or additional powers request.

10. Legal Aspects

The legal implications are contained in the body of the report.

11. Contact Officers

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