

NATIONAL CITIZEN SERVICE BILL [HL]

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the National Citizen Service Bill [HL] as brought from the House of Lords on 14 December 2016 (Bill 114).

- These Explanatory Notes have been prepared by the Department for Culture, Media and Sport in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

Table of Contents

Subject	Page of these Notes
Overview of the Bill	2
Policy background	2
Legal background	3
Territorial extent and application	4
Commentary on provisions of Bill	5
Part 1: National Citizen Service Trust	5
Clause 1: National Citizen Service Trust	5
Clause 2 and Schedule 1: Transfer schemes	5
Clause 3: Finance	5
Clause 4: Accounts and audit	5
Clause 5: Business plan	5
Clause 6: Annual report	5
Clause 7: Notification of financial difficulties and Criminal Conduct	5
Clause 8: Fees	6
Clause 9: HMRC functions	6
Part 2: General	6
Clauses 10 to 15 and Schedule 2: miscellaneous provisions	6
Commencement	7
Financial implications of the Bill	7
Parliamentary approval for financial costs or for charges imposed	7
Compatibility with the European Convention on Human Rights	7
Related documents	8
Annex A - Territorial extent and application in the United Kingdom	9
Subject matter and legislative competence of devolved legislatures	10

Overview of the Bill

- 1 This Bill will create a statutory framework for the National Citizen Service ('NCS'), with the aim of ensuring proper oversight of the management of public funding for the service. It should be read alongside the Royal Charter ('the Charter') that incorporates the body that will deliver NCS, to be known as the NCS Trust. The Bill and the Charter work together, and the Bill makes provision about the NCS Trust.

Policy background

- 2 The NCS has been available since 2011, and consists of courses for young people in England and Northern Ireland, mostly aged 16 and 17. The courses take place during school holidays and are partly residential. They comprise a mixture of activities – adventures, life skills and social action – which encourage young people to engage with their community and develop for the future.
- 3 The programme is currently administered by a community interest company, also called the NCS Trust (company registration number 08235117, 'the Company'). The Company contracts with providers in different parts of England to deliver the programme. The Company is grant-funded on an annual basis by the Cabinet Office.
- 4 The NCS is intended to enable the young people who attend to meet people from different backgrounds, enhancing their life skills and increasing their employability. It is also intended to encourage community cohesion. An increase in funding for the NCS was announced in the 2015 spending review to fulfil the government's aspiration that attendance on the NCS become a 'rite of passage' for all young people.
- 5 The Bill aims to help fulfil the government's objectives in two ways. First, the Bill (in combination with the Charter) will reform the legal framework for the NCS. In particular the combination of the Bill and Charter:
 - Incorporates the new NCS Trust as a Charter body and creates a legislative mechanism to transfer the business of the Company to the new Trust. This creates a legislative framework for the NCS, with the aim of making it a national institution while preserving its independent ethos;
 - Aims to secure that the administrative and funding arrangements for the NCS Trust are appropriate for the increased level of public funds the Trust will manage, with proper accountability to government and Parliament; and
 - Aims to impose on the NCS Trust an appropriate level of government control for a body in receipt of public funds.
- 6 Secondly, the Bill enables HMRC to send information about the Trust and its work to those young people who are eligible for NCS (and their parents and carers) and invite them to take part in the NCS. This will allow HMRC to assist the Trust to promote its programmes.
- 7 Detailed provisions on the constitution, procedure and powers of the NCS Trust are contained in the Charter (which has been published in draft as a Command Paper to coincide with introduction of the Bill). These include matters such as: the Trust's functions and objectives; the methods by which its members and chief executive are to be appointed; remuneration of members and employees; delegation of functions; regulation of procedure; and the powers of the Trust, for example to enter into agreements, invest money and accept gifts.

Legal background

- 8 The majority of the relevant legal background is explained in the policy background section of these notes.
- 9 As explained in that section, the NCS is currently administered by the Company. The Company was incorporated in October 2012 under the name NCS Trust. As a community interest company it is subject to the provisions of the Companies (Audit, Investigations and Community Enterprise) Act 2004.

Territorial extent and application

- 10 Clause 13 sets out the territorial extent of the Bill; that is the jurisdictions of which the Bill forms part of the law. The extent of a Bill can be different from its application. Application is about where a Bill produces a practical effect.
- 11 This Bill extends to England and Wales but applies in England only.
- 12 There is a convention that Westminster will not normally legislate with regard to matters that are within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly without the consent of the legislature concerned.
- 13 While the Bill includes provisions that are within the legislative competence of the Scottish Parliament, the National Assembly for Wales and the Northern Ireland Assembly, the Bill applies in England only, so no legislative consent motion is being sought in relation to any provision of the Bill.
- 14 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom. The table also summarises the position regarding legislative consent motions and matters relevant to Standing Orders Nos. 83J to 83X of the Standing Orders of the House of Commons relating to Public Business.

Commentary on provisions of Bill

Part 1: National Citizen Service Trust

Clause 1: National Citizen Service Trust

- 15 Clause 1 refers to the NCS Trust, the body that will be incorporated by the Charter. It describes the Trust's functions, which are the functions to be conferred on it by article 3 of the Charter.

Clause 2 and Schedule 1: Transfer schemes

- 16 Clause 2 introduces Schedule 1, which confers power on the Secretary of State to make a scheme providing for the transfer of the staff, property, rights and liabilities of the Company to the NCS Trust. This allows the Secretary of State, once the Trust has come into existence, to transfer the business and assets of the Company to the Trust. This is intended to allow an orderly transfer, which will preserve continuity and, where appropriate, protect the rights of NCS staff and interested third parties.
- 17 Under paragraph 6 of Schedule 1 the Secretary of State must consult those likely to be affected by a transfer scheme and have regard to the results of the consultation.

Clause 3: Finance

- 18 Clause 3 gives the Secretary of State the power to fund the NCS Trust through grants out of money provided by Parliament.

Clause 4: Accounts and audit

- 19 Clause 4 sets out the accounting and audit requirements to which the NCS Trust is subject. It requires that the Trust's accounts must be examined by the National Audit Office and laid before Parliament.

Clause 5: Business plan

- 20 Clause 5 places a requirement on the NCS Trust to publish an annual business plan setting out its main priorities and activities for the year ahead. This will provide a yardstick against which government, Parliament and the public can assess the Trust's performance.

Clause 6: Annual report

- 21 Clause 6 requires the NCS Trust to give the Secretary of State an annual report, detailing the extent to which it has met its strategic priorities for the year. The annual report must also address the quality of the Trust's programmes, amongst other matters. This is intended to enable effective monitoring of the Trust's performance from one year to the next. Combined with the business plan, this ensures government, Parliament and the public have oversight of how far the Trust has achieved its objectives for the year.

Clause 7: Notification of financial difficulties and Criminal Conduct

- 22 Clause 7 requires the NCS Trust to notify the Secretary of State promptly if: (a) anyone supplying the Trust with goods or services to support the Trust's main functions is in serious financial difficulty or in breach of contract with serious consequences for the Trust; (b) a member of staff of the Trust or one of its suppliers commits fraud or is in breach of his or her employment contract with serious consequences for the Trust, or (c) there is a police investigation into an allegation of criminal conduct by a member of staff of the NCS Trust or one of its providers, where that investigation could have serious consequences for the NCS Trust.

- 23 This is intended to ensure the government is kept informed of anything that poses a serious risk to delivery of the programme or the performance of the Trust. It does not require notification of, for example, minor breaches of contract or breaches of contract by suppliers providing goods or services that do not directly support the Trust's main functions, such as cleaning or stationery providers.

Clause 8: Fees

- 24 The Company currently charges a small fee for attendance on its programmes. The fee does not represent the cost of the programmes; it is an incentive to ensure attendance. Clause 8 enables the NCS Trust to continue this practice if appropriate.

Clause 9: HMRC functions

- 25 Clause 9 allows HMRC to assist the NCS Trust in performing its function of promoting its programmes by sending out communications to young people and their parents and carers. The communications may contain information about the Trust's work and invite the young people concerned to participate in NCS programmes. The Trust must determine the content of the communications. This is intended to help the Trust get its message across to the majority of eligible young people.
- 26 The provision concerns functions exercisable by HMRC in relation to information held for the purpose of HMRC's reserved functions relating to taxation and fiscal policy. The government therefore considers that it does not fall within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly.

Part 2: General

Clauses 10 to 15 and Schedule 2: miscellaneous provisions

- 27 Clauses 10 to 15 make provision relating to definitions; consequential amendments; transitional arrangements; extent; commencement; and short title.
- 28 Clause 11 introduces Schedule 2, which makes consequential amendments to other legislation in relation to the NCS Trust. The consequential amendments mean that the chair of the Trust is disqualified from standing for election to the House of Commons, and that the Trust is subject to the requirements of the Public Records Act 1958, the Freedom of Information Act 2000 and the Equality Act 2010.
- 29 Paragraph 1 of Schedule 2 concerns eligibility for election to the House of Commons. In the government's view it therefore does not fall within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly. Schedule 2 to the Bill does not, therefore, deal solely with devolved matters.

Commencement

- 30 The provisions of the Bill will come into force as provided for by clause 14 of the Bill. Clause 14 itself (commencement) comes into force on Royal Assent. The remaining measures in the Bill will be brought into force by regulations.

Financial implications of the Bill

- 31 In the 2015 Autumn Statement the NCS programme was allocated funding up to and including the financial year 2019/20, subject to annual approval by Her Majesty's Treasury. All costs associated with the transfer of the business of the Company to the NCS Trust will be met from within the existing budget. The current budget includes funding for staff in the Department for Culture, Media and Sport and the NCS Trust. No additional staff will be required to do work arising in connection with the transfer.
- 32 The Bill will not give rise to any changes to the funding costs of the NCS programme. The NCS Trust will have the same running costs as the Company would have if it continued to deliver the programme.
- 33 The costs to HMRC of writing to young people eligible for the programme will also be met from the existing budget. The cost of writing to young people will be partially offset by associated savings on other marketing activities.
- 34 The government therefore considers that the Bill will have a neutral financial impact.

Parliamentary approval for financial costs or for charges imposed

- 35 The Bill does not impose any charges. It permits the NCS Trust to charge fees for participation in NCS, as the Company does now, but does not require it. The Bill does not result in a change of approach here and the NCS Trust will be accountable to government and Parliament for the fees it charges.
- 36 As detailed above, the Bill will have a neutral financial impact. The costs of transferring the business of the Company to the NCS Trust will be met from the existing NCS budget. The costs associated with HMRC writing to young people and their parents and carers will be partially offset by reduced marketing costs elsewhere. Subject to that, all costs will be met from the existing budget allocation.

Compatibility with the European Convention on Human Rights

- 37 Rob Wilson, the Minister for Civil Society, has stated that in his view the provisions of the National Citizen Service Bill are compatible with Convention rights.
- 38 The power to make a transfer scheme engages the right to peaceful enjoyment of property under Article 1 of Protocol 1 of the Convention. However, the government considers the interference with that right to be proportionate. In exercising the power to make a transfer scheme the Secretary of State must act compatibly with the Human Rights Act 1998. Any transfer scheme made by the Secretary of State must therefore be for a legitimate purpose and be proportionate to that purpose. A transfer scheme may contain safeguards to protect the

interests of third parties, such as parties to contracts with the Company.

Related documents

39 The following documents are relevant to the Bill and can be read at the stated locations:

- *The Conservative Party Manifesto 2015*, April 2015
<https://www.conservatives.com/manifesto>
- Queen's Speech, May 2016
<https://www.gov.uk/government/speeches/queens-speech-2016>
- Prime Minister's speech on life chances, January 2016
<https://www.gov.uk/government/speeches/prime-ministers-speech-on-life-chances>

Annex A - Territorial extent and application in the United Kingdom

This Bill forms part of the law of England and Wales but applies in England only. Clause 9 (HMRC functions) and paragraph 1 of Schedule 2 (consequential amendments) relate respectively to HMRC functions and elections to the House of Commons. In the government's view both provisions relate to matters that are wholly reserved. Paragraph 1 of Schedule 1 relates to employment law on the transfer of staff between undertakings. In the government's view this is a reserved matter in relation to Scotland and Wales but within the legislative competence of the Northern Ireland Assembly. The other provisions of the Bill are, in the view of the UK government, within the legislative competence of the National Assembly for Wales, the Scottish Parliament and the Northern Ireland Assembly for the purposes of the English Votes for English Laws procedure (EVEL).¹

None of the provisions of the Bill has any minor or consequential effects outside England.

Provision	Extends to E & W and applies to England ?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of the National Assembly for Wales?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion needed?
1 National Citizen Service Trust								
Clauses 1 and 3-8	Yes	No	No	No	Yes	Yes	Yes	No
Clause 2 and Schedule 1	Yes	No	No	No	No	No	Yes	No
Clause 9	Yes	No	No	No	No	No	No	No
2 General								
Clauses 10-15	Yes	No	No	No	Yes	Yes	Yes	No
Schedule 2	Yes	No	No	No	No	No	No	No

¹ References in this Annex to a provision being within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly are to the provision being within the legislative competence of the relevant devolved legislature for the purposes of Standing Order No. 83J of the Standing Orders of the House of Commons relating to Public Business.

Subject matter and legislative competence of devolved legislatures

The relevant provisions of the Bill for these purposes are all the provisions of the Bill other than clause 2 (transfer schemes), clause 9 (HMRC function), paragraph 1 of Schedule 1 (staff transfer schemes) and paragraph 1 of Schedule 2 (consequential amendments). The relevant provisions are concerned with the subjects of training, education, volunteering, social development and recreation ('the subjects'). The question of legislative competence for the subjects in each devolved legislature is addressed below.

Scotland: None of the subjects fall within any of the categories of reserved matters listed in Schedule 5 to the Scotland Act 1998. The government therefore considers them to be within the legislative competence of the Scottish Parliament.

Wales: Pursuant to section 108 of the Government of Wales Act 2006, the subjects all fall within categories of legislative competence that have been devolved to the National Assembly for Wales as listed in Schedule 7, namely:

- Economic development, including social development of communities (paragraph 4);
- Education and training, including vocational, social and physical training and the careers service, plus promotion of advancement and application of knowledge (paragraph 5);
- Social welfare, including the wellbeing of children and young adults (paragraph 15); and
- Sport and recreation (paragraph 16).

Northern Ireland: None of the subjects fall within any of the categories of reserved matters listed in Schedule 2 to the Northern Ireland Act 1998 or the excepted matters listed in Schedule 3. The government therefore considers them to be within the legislative competence of the Northern Ireland Assembly.

NATIONAL CITIZEN SERVICE BILL [HL]

EXPLANATORY NOTES

These Explanatory Notes relate to the National Citizen Service Bill [HL] as brought from the House of Lords on 14 December 2016 (Bill 114).

Ordered by the House of Commons to be printed, 14 December 2016

© Parliamentary copyright 2016

This publication may be reproduced under the terms of the Open Parliament Licence which is published at www.parliament.uk/site-information/copyright

PUBLISHED BY AUTHORITY OF THE HOUSE OF COMMONS