

Discussion document to support further engagement on Safe and Effective Staffing in Health and Social Care

January 2018

INTRODUCTION

This paper is intended to enable further engagement on development of approaches to safe and effective staffing. It sets out refreshed proposals on proposed legislation on safe and effective staffing (referred to in this document as the 'Safe Staffing' Bill, though the final title of the Bill, when it is introduced to the Parliament is still to be finalised), building on the responses to an initial consultation (April 2017) and more recent engagement with the health and social care sector. The [summary of the initial consultation responses](#) was published 11 December 2017. This written engagement exercise invites views by 19 February 2018 on the Scottish Government's refreshed proposals to create a cohesive legislative framework across health and social care regarding workforce planning, ensuring appropriate staffing and for the use of workload and workforce planning methodologies and tools where they exist.

BACKGROUND

The 'Safe Staffing' Bill will deliver on the Scottish Government commitment to enshrine in law the principles of safe staffing in the NHS, starting with the nursing and midwifery workforce planning tools. *A Nation With Ambition: The Government's Programme for Scotland 2017-18* indicated that the Bill would ensure that nationally agreed, evidence-based workload and workforce planning tools are applied in nursing and midwifery settings, and ensure key principles relating to professional judgement, local context and quality measures underpin workload and workforce planning.

On 11 April 2017 the Scottish Government launched a consultation on 'Safe and Effective Staffing in Health and Social Care'. The consultation ran for 12 weeks, closing on 5 July 2017. A series of consultation events was also held across Scotland.

That consultation paper invited views on proposals to introduce legislation requiring organisations providing health and/or social care to:

- Apply nationally agreed, evidence based workload and workforce planning methodologies and tools where they exist and are validated.
- Ensure consideration of professional judgement, local context and quality measures underpin workload and workforce planning and inform staffing decisions.
- Monitor and report on how they have done this and provide assurance regarding safe and effective staffing.

The paper made clear that the proposals were intended to:

- Strengthen and enhance arrangements already in place to support continuous improvements and transparency in workforce planning and employment practice across Scotland.
- Support consideration of service delivery models and service redesign to ensure Scotland's health and social care services continue to meet the needs of the people they serve, both now and in the future.

- Ensure consideration of professional judgement, local context and quality measures inform workload and workforce planning decisions.
- Provide assurance – including for service users and staff – that safe and effective staffing is in place to enable the provision of high quality care.
- Actively foster an open and honest culture where all staff feel safe to raise concerns regarding safe and effective staffing.

The proposals for legislation set out in the 2017 consultation document focused intentionally on the application of evidence based approaches to nursing and midwifery workload and workforce planning as there is already a validated framework, methodology and suite of 12 workforce planning tools mandated for use in NHS Scotland as part of the Local Delivery Planning process. Additionally the consultation proposed that the legislation could contain provisions to enable this approach to be widened to include organisations providing health and social care services and to other staff groups if other relevant tools were developed in future. It asked for views on whether the legislation should apply to health and social care organisations, and on extension to other settings and staff groups (beyond the existing nursing and midwifery tools for NHS settings) in the future.

Consultation findings

A summary of consultation findings can be found here [link to consultation response report](#) and the Scottish Government published our response here [link to response](#). In brief, over 80% of the respondents agreed that:

- a statutory requirement to apply evidence based workload and workforce planning methodology and tools will help support consistent application;
- the requirement should apply to organisations providing health and/or social care services;
- consideration should be given to extending the requirement to apply a similar approach to other settings and/or staff groups in the future.

Responses highlighted that a focus on achieving better outcomes for service users should be at the heart of the legislation; that workload and workforce planning tools are only one of the components required to achieve high quality care and improved outcomes; and suggested setting out further guiding principles on safe and effective staffing in the Bill.

There was significant divergence in responses over whether legislation should span social care, given existing statutory frameworks for these settings. In particular, Health and Social Care Partnerships and some public bodies did not support the inclusion of social care. Respondents emphasised the importance of ensuring that legislation reflects the context of health and social care integration, while also highlighting the specific context, requirements and current assurance framework in social care. Respondents also identified the risk of resources being drawn from one service to another if a whole-systems approach is not taken; while the need to extend beyond nursing and midwifery to the wider multi-disciplinary or multi-agency team was a frequently raised theme.

The purpose of this engagement

We recognise that some stakeholders may not have been aware of the proposal to include social care in the Bill and therefore did not engage with the initial consultation on the legislation. As part of overall proposals, the consultation proposed that the Bill would be able to extend requirements to apply workload and workforce planning tools and methodologies to social care organisations when tools and methodologies were developed in the future. It is important that stakeholders across health and social care are involved in the development of this legislation to ensure it delivers the intended aims.

We also recognise that there have also been important wider developments since the initial consultation was undertaken, notably the publication of Part 2 of the National Health and Social Care Workforce Plan, co-produced by the Scottish Government and COSLA. The recommendations aim to begin a process to improve national and workforce planning for health and social care in Scotland, in keeping with the principles of ensuring the right people, in the right place at the right time to deliver sustainable and high quality services with improved outcomes for service users. One of the recommendations is to progress and co-produce social care and multi-disciplinary workforce planning tools that support the deliver high quality care that reflects the new health and social care standards, and enable service redesign and new models of care.

The details of the legislation are still to be defined and are a focus for a Bill Reference Group; however, this paper sets out intentions for the legislation at this stage, taking account of themes from the initial consultation and subsequent engagement with stakeholders. It is important that stakeholders across health and social care are involved in the development of this legislation to ensure it delivers the intended aims. Therefore, we are undertaking further focussed engagement in early 2018 on refreshed proposals to ensure the legislation and underpinning policy are effective and proportionate. **As this discussion paper builds on the initial consultation and will run alongside further engagement with stakeholders the response period will be limited to four weeks.**

Feedback

Views are particularly sought on the following areas where provisions in the legislation may apply:

Sections 1-2 invite your views on refreshed proposals that cover health and social care sectors and aim to create a cohesive legislative framework for workforce planning across health and social care.

Section 3 invites your views on proposed requirements applicable to health boards.

Sections 4-6 invite your views on proposals on how the legislation could apply to the social care sector.

Section 7 invites your views on any risks or unintended consequences of the proposals.

SUMMARY OF PROPOSALS

The overarching intention is for the legislation to be a further enabler of high quality care and improved outcomes for individuals. Given the importance of ensuring the right people, in the right place at the right time to deliver sustainable and high quality services with improved outcomes for service users, irrespective of setting, and of enabling integrated workforce planning, the intention is that the legislation will – in an appropriate and proportionate way - span the health and social care landscape. However, in taking this broader approach, the legislation will not be restrictive or prescriptive but rather will seek to be appropriate and enabling for the social care sector, and in particular support the recommendations in the co-produced Part 2 of the National Health and Social Care Workforce Plan.

1. A workload and workforce planning duty applicable to Health Boards and care service providers.

Regulation 15 of The Social Care and Social Work Improvement Scotland (Requirements for Care Services) Regulations 2011 (“the 2011 regulations”) places a duty on care service providers, having regard to the size and nature of the care service, the statement of aims and objectives and the number and needs of service users, to ensure appropriate numbers of suitably qualified and competent staff are in place to ensure the welfare and safety of service users. Care service providers are those listed in section 47 and described more fully in Schedule 12 of the Public Services Reform (Scotland) Act 2010 who are required to register with the Care Inspectorate and include support services, care home services, school care accommodation services, nurse agencies, child care agency, secure accommodation services, offender accommodation services, adoption services, fostering services, adult placement services, child minding, day care of children and housing support services.

Health Boards have a duty to put and keep in place arrangements for the purposes of workforce planning (section 121(c) of the National Health Service (Scotland) Act 1978).

In order to create a coherent overall legislative framework for workforce planning across the health and social care sector, the intention is that this legislation will place a duty on Health Boards and care service providers to consider the need for the provision of appropriate numbers of suitably qualified staff, similar to and learning from the current requirement for care service providers set out in the 2011 regulations.

For care service providers, this duty would maintain but replace the existing requirement placed on care service providers through regulation 15 of the 2011 regulations. Other requirements under those regulations would be unaffected. However, individuals who do not employ staff would be excluded.

For Health Boards this duty would be required as part of their existing duty to put and keep in place arrangements for the purposes of workforce planning in section 121(c)

of the National Health Service (Scotland) Act 1978. While it might replace section 12I(c), it would be an expansion of that existing duty.

Requirements on Health Boards will be linked to the planning and provision of health care services, so where those services (i.e. functions) are delegated to an Integration Authority, as per the requirements of the Public Bodies (Joint Working) (Scotland) Act 2014 – whether an Integration Joint Board, Health Board or Local Authority - then that body must also comply with them when planning and delivering those services. It is section 25 of the Public Bodies (Joint Working) (Scotland) Act 2014 that has the effect of making the requirements flow through to Integration Authorities.

As set out above, the legislation will not impose minimum staffing requirements.

Organisations' progress in meeting requirements would be monitored through a duty to report which could be incorporated into existing local and national reporting and regulatory mechanisms including Local Delivery Planning, Annual Reviews and HIS and Care Inspectorate scrutiny processes, including inspections and Quality of Care Reviews, and through the reporting processes required of Integration Authorities. The Care Inspectorate currently assesses staffing levels for all social care providers it registers and inspects and this function would continue.

Question 1:

Question 1a: Do you think it is important to have a coherent legislative framework across health and social care to underpin workforce planning and appropriate staffing in health and social care? [Yes/No]

If you answered yes, how important

1 = extremely important,

2 = very important,

3 = moderately important,

4 = slightly important,

5 = not at all important

Question 1b: How should organisations' progress in meeting requirements be monitored and facilitated, taking account of what currently works well?

Question 1c: Please provide any other comments you may have. [Text box]

2. Overarching principles applicable to health and social care service providers

Overarching principles will apply to Health Boards and care service providers (those care services required to register with the Care Inspectorate excluding individuals who do not employ any staff) who will be required to take them into account in carrying out their general workload and workforce planning activities. The general workforce planning activities and overarching principles will apply to all staff groups delivering health and care services, from commencement of the Act which results from the Bill.

The inclusion of principles is in response to views expressed in the initial consultation that enshrining the nursing and midwifery workload and workforce planning process alone would be insufficient, given the recognised importance of ensuring the right people, in the right place at the right time to deliver high quality care, irrespective of setting or staff group. It is also intended to mitigate the risk that resources may be diverted away from staff groups and settings not covered by existing workload and workforce planning tools.

Initial proposals are that the principles will set out the factors to be considered when carrying out workforce planning, notably that workforce planning must ensure

- high quality services
- effective and efficient use of resources
- services that meet service user need
- services that respect the dignity and rights of service users.

These principles are still in development and will be informed by wider stakeholder engagement.

Question 2a:

What is your view of the proposal that there should be guiding principles for workforce planning to provide NHS Boards and care service providers with a foundation on which to base their staffing considerations?

- Strongly agree*
- Agree*
- Neither agree nor disagree*
- Disagree*
- Strongly disagree*

Question 2b:

Do you have a view on whether/how application of these principles should be monitored?

Question 2c:

Please rate the following examples of potential principles on a scale of 1 to 4, where 1 is very important, 2=important, 3=not very important, 4=not important at all (note that the following do not represent draft wording for the principles to be included in legislation).

- i. Workforce planning must ensure an appropriate number and mix of staff to provide high quality services.
- ii. Workforce planning must ensure an appropriate number and mix of staff to provide effective and efficient use of resources.

- iii. Workforce planning must ensure an appropriate number and mix of staff to provide services that meet service user needs.
- iv. Workforce planning must ensure an appropriate number and mix of staff to provide services that respect the dignity and rights of service users.

Question 2d:

Are there other principles you think should be included?

3. Requirements applicable to Health Boards

The legislation will include more specific requirements where a validated workload planning tool and methodology exists – in the first instance this will only be applicable to nursing and midwifery services and to medical services in emergency medicine settings.

For settings where a validated workload and workforce planning tool exists, NHS Boards and, as appropriate, Integration Authorities, will have to evidence that they have followed a common methodology prior to making decisions about staffing requirements, including:

- Application of the specialty specific and professional judgement tools
- Consideration of nationally agreed quality measures
- Consideration of local context
- Consideration of staff and service user views
- Consideration of the need to redesign services.

These settings and tools will be specified in the Bill so it is clear where these additional requirements apply. The legislation will also allow for the development of new tools, including multi-disciplinary tools.

To ensure that staff understand the staffing decisions made, Health Boards and, as appropriate, Integration Authorities, will have to provide staff with information about the use of the methodology and the staffing decisions reached, as well as encouraging staff to submit views about the use of the methodology; and to train staff in the use of the tools and methodology.

Health Boards and, as appropriate, Integration Authorities, will be required to report on the requirements placed under the Bill – in practice, this reporting will be done through existing reporting mechanisms of local delivery plans, annual reviews and quality of care reviews undertaken by NHS Healthcare Improvement Scotland.

The Executive Nurse Director must be enabled, by the NHS Board and Integration Authority, to inform, influence and advise on nursing and midwifery staffing requirements, risk analysis and mitigation and prioritisation prior to corporate decisions being made.

Scottish Ministers will be able to issue guidance to Health Boards and Integration Authorities setting out further detail around the requirements contained within the Bill.

Requirements on Health Boards, and, as appropriate, Integration Authorities, will be linked to the provision of health care services, so where those services (i.e. functions) are delegated to an Integration Authority – either an Integration Joint Board or Local Authority - then that body must also comply with them when delivering those services. It is section 25 of the Public Bodies (Joint Working) (Scotland) Act 2014 that has the effect of making the requirements flow through to Integration Authorities.

Question 3a:

What is your view on the proposed requirements for Health Boards?

Strongly agree

Agree

Neither agree nor disagree

Disagree

Strongly disagree

Question 3b:

Are there any other requirements you think should be included?

Question 3c:

Please provide any other comments on the proposed requirements set out in section 3.

4. Development of validated tools and methodologies for the social care sector

The legislation seeks to be appropriate, proportionate and enabling for the social care sector and to be supportive of the recommendations in Part 2 of the National Health and Social Care Workforce Plan (published December 2017). It does not seek to prescribe an approach to workforce planning, but rather to enable the development of suitable approaches for different settings in the future.

The proposal is that the legislation will build on existing legislative functions by providing:

- A function for the Care Inspectorate to work with the social care sector to develop and validate workload and workforce planning tools for use in specified settings, as agreed with and produced with the sector.
- A regulation-making power for Scottish Ministers so that they can subsequently confirm the use of any validated tools or methodologies developed by the Care Inspectorate for specified settings within the sector, following appropriate consultation with the sector.
- The ability for Scottish Ministers or the Care Inspectorate to issue guidance to care service providers setting out further detail around the duties contained within the Bill, as well as setting out requirements around reporting and compliance.

Question 4:

Do you agree with the proposed role for the Care Inspectorate in leading work, with the social care sector, to develop workforce planning tools for application in specified settings, where there is an identified need?

Strongly agree

Agree

Neither agree nor disagree

Disagree

Strongly disagree

If you answered Disagree/Strongly disagree, who else do you think should lead this work?

Question 4b:

Do you think that social work¹ should be included within the scope of this legislation (while there is currently no proposal to include social work, this could be considered for inclusion at a later stage).

Strongly agree

Agree

¹ Social work is used here to mean statutory social work delivered by local authorities as defined by [schedule 13 of the Public Services Reform \(Scotland\) Act 2010](#),

Neither agree nor disagree
Disagree
Strongly disagree

Question 4c:

Please provide any other comments on the inclusion of social work within the scope of the legislation.

5. Role of the sector in identification of the social care settings for which there may be a need for development and application of validated tools and methodologies and for inclusion within legislation.

The aim of the legislation is to build on and strengthen existing mechanisms and create a cohesive approach to workforce planning across health and social care.

In Health Boards, the Nursing and Midwifery Workload and Workforce Planning Programme has taken an evidence based approach to workload and workforce planning. The ground-breaking approach, tools and methodologies have been developed over a number of years with investment of considerable time and resource. It is recognised that similar effort and investment will be needed for the development of approaches suitable for specific social care settings.

It will be important that, as for the Nursing and Midwifery Workload and Workforce Planning Programme, the sector itself is fully engaged in development and validation of tools and methodologies that are appropriate for specified settings. It will also be important that the sector supports any future use of legislation through regulations to require use of newly developed tools.

The following question sets out some possible suggestions for how, in practice, the sector could be engaged in the development and validation of an approach appropriate for a specified setting. Understanding views on how the legislation might work in practice will help inform approaches to legislative provisions.

Question 5a:

In delivering the function described under 3 above, the Care Inspectorate could be required:

- i.* To work with employers/service providers and commissioners² from the sector to identify and agree specified settings where there is a need for the development of workforce planning tools and methodologies
- ii.* To work with service providers and commissioners from the appropriate parts of the sector to develop and validate workforce planning tools and methodologies to demonstrate that they are practicable and beneficial for specific settings

² Service providers and commissioners might include, for example, service providers from the independent and third sectors, local government as service provider/service contractor and Integrated Joint Boards as commissioners.

- iii. To consult with the sector before a requirement to use validated workforce planning tools and methodologies is confirmed in regulations.

How important do you consider the suggestions above are in providing possible routes for the sector to be fully engaged in the development and validation of approaches appropriate for a specified setting?

Mark each requirement on a scale of 1 to 4, where 1 is very important, 2=important, 3=not very important, 4=not important at all, 5= not desirable

Question 5b:

Are there any other routes you think should be considered to ensure appropriate engagement with the sector? *[text box]*

Question 5c:

Please identify any settings where you think the development of appropriate workload and workforce planning tool or methodology is most important; and any care settings where you think this is not relevant or required. *[text box]*

6. Support for the development of validated tools and methodologies for the social care sector.

As identified above, the Nursing and Midwifery Workload and Workforce Planning tools and methodologies that will be specifically included in the legislation have been developed over a number of years with investment of considerable time and resource. We acknowledge that development of similar approaches for the social care sector will require support, both for the proposed role of the Care Inspectorate and for those service providers who engage with the Care Inspectorate in developing and validating approaches, tools and methodologies.

Question 6: What support do you think will be required / most useful to enable the development of validated tools and methodologies for the social care sector?

Please mark each suggestion on a scale of 1 to 4, where 1 is very important, 2=important, 3=not very important, 4=not important at all

- i. Dedicated central expertise for the identification of specified settings where the development of workload and workforce planning tools and methodologies would be practicable and beneficial.
- ii. Additional resource for the Care Inspectorate to enable the proposed functions
- iii. Training for key personnel in the sector in the development of workforce planning approaches.
- iv. Dedicated resource for service providers who engage in the development and validation of approaches, tools and methodologies.

- v. Training for key personnel in specified services once validated tools and methodologies are confirmed through regulations.
- vi. Other *[please specify – large text box]*

7: Risks and unintended consequences

Question 7a: What risks or unintended consequences might arise as a result of the proposed legislation and potential requirements? [text box]

Question 7b: What steps could be taken to deal with these consequences? [text box]

8. CONCLUSION & NEXT STEPS

This paper has summarised refreshed proposals for the ‘Safe Staffing’ Bill, building on the responses to an initial consultation (April 2017) and more recent engagement with the health and social care sector. We would welcome views by **20 February 2018** on the refreshed proposals.

Please email SafeandEffectiveStaffing@gov.scot or telephone 0131 244 5669 if you have any queries regarding this written engagement exercise, require any further information or would like to discuss the proposals in more detail before providing your views.

We will consider responses and continue to work closely with stakeholders, including the Bill Reference Group and the legislation’s Strategic Programme Board, to inform the development of the legislation and ensure the legislation and underpinning policy are effective and proportionate and applied in a meaningful way in the correct settings.

In tandem with this written engagement exercise, we will be holding three regional events in February 2018 (Aberdeen on 5 February, Glasgow on 7 February and Edinburgh on 8 February) which will provide further opportunity to discuss the proposals. If you wish to book a place at one of the regional events please email SafeandEffectiveStaffing@gov.scot indicating which event you wish to attend. A Webex or video conference will also take place on 12 February for those not able to attend one of the events in person.

The intention is for the Bill to be introduced to the Scottish Parliament later in 2018.



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Edinburgh
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