**Final
Business and Regulatory Impact Assessment**

Health and Care (Staffing) (Scotland) Bill

Scottish Government
Riaghaltas na h-Alba
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Title of Proposal
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1.   Purpose and intended effect

Objective

1.1   The aim of the Health and Care (Staffing) (Scotland) Bill is to help ensure improved outcomes for service users by putting in place a framework to support appropriate staffing for high quality care. Provision of high quality care requires the right people, in the right place, with the right skills at the right time to ensure the best health and care outcomes for service users and people experiencing care. The Bill will support the profession led development of evidence based approaches to workload planning that has been successful for nursing and midwifery to be shared across health and social care. Staffing tools and methodologies developed in this way will support local decision-making, flexibility and the ability to redesign and innovate in other health and care settings.

1.2   As integration of health and social care progresses it is more important to facilitate multi-disciplinary and multi-agency working across a range of professionals and staff groups. It is also important to ensure that robust evidence is available to support decisions about staffing requirements if and when services are redesigned across multi-disciplinary or multi-agency teams. To support and enable the Scottish Government's ambition to deliver integrated workforce planning and appropriate staffing across health and care services, the provisions of the Bill spans the health and care service landscape in an appropriate and proportionate way.

1.3   The Bill builds on existing measures and statutory frameworks to ensure safe and high quality care and to support and sustain the health and care workforce and takes a further important step by creating a coherent legislative framework regarding staffing across health and care services.

1.4   For Health Boards, the Bill supports an open and honest culture with the aim that staff are engaged in relevant processes and informed about decisions relating to staffing requirements and feel safe to raise any concerns about staffing levels.

1.5   The ambition in relation to care services is to enable the further development of suitable approaches by and for the care sector where this is considered appropriate and in collaboration with the sector. If and when a staffing method or tool is developed, the methodology agreed during the tool development process may be prescribed by the Scottish Ministers to ensure consistent application across the sector.

1.6   Meeting the objectives of the Bill will provide assurance, including for staff and service users, that appropriate staffing is in place to enable the provision of safe and high quality care, irrespective of health or care service setting.

Background

1.7   The Provision of high quality care requires the right number of people, in the right place, with the right skills at the right time to ensure the best health and care outcomes for service users and people experiencing care. In the Programme for Government 2017/18[1] "A Nation with Ambition" the Government committed to introduce a safe staffing bill during the 2017/18 Parliamentary year to "deliver on the commitment to enshrine in law the principles of safe staffing in the NHS, starting with the nursing and midwifery workforce planning tools.

1.8   The Bill will build on existing statutory frameworks for providing for a health and care workforce and ensuring safe and high quality care.

1.9   The National Health Service (Scotland) Act 1978 places a duty on NHS Boards in Scotland have a duty to put and keep in place arrangements for the purposes of monitoring and improving the quality of health care which it provides to individuals and to workforce plan. The National Workforce Planning Framework[2] and the National Workforce Planning Framework 2005 Guidance[3] established how the requirement for NHSScotland to workforce plan should be met.

1.10   Revised workforce planning guidance issued in 2011[4] set out the six step methodology to integration workforce planning and is applied across the whole NHS Scotland workforce.

1.11   Currently, care service providers must comply with a more specific requirement to ensure appropriate numbers of staff. Regulation 15 of the Social Care and Social Work Improvement (Scotland) Regulations 2011[5] (2011 Regulations) requires providers to ensure appropriate numbers of suitably qualified and competent staff for the health, welfare and safety of service users. Providers are also required to ensure that persons employed in the provision of a care service receive training appropriate to the work they are to perform and suitable assistance, including time off work, for the purpose of obtaining further qualifications appropriate to such work.

1 https://beta.gov.scot/publications/nation-ambition-governments-programme-scotland-2017-18/
2 http://www.gov.scot/Publications/2005/08/30112522/25230
3 http://www.sehd.scot.nhs.uk/mels/HDL2005_52.pdf
4 http://www.sehd.scot.nhs.uk/mels/CEL2011_32.pdf
5 http://www.legislation.gov.uk/sdsi/2011/9780111012321/regulation/15

1.12   The Scottish Government Health and Social Care Directorates have been working with NHS Scotland for a number of years on the development of a suite of nursing and midwifery workload and workforce planning tools and methodology utilising an evidence based, rigorous and robust process of developing, testing and implementation. Application of the tools and methodology supports evidence based decision making and risk assessment in relation to nursing and midwifery staffing establishments in a variety of service settings; and helps Health Boards ensure the most efficient and effective deployment of nursing and midwifery teams to meet service users' needs.

1.13   These tools were, and continue to be endorsed by the Scottish Executive Nurse Directors (SEND) and professional bodies. The tools and methodology have been mandated for use in Health Boards since 2013 following on from Chief Executive Letter (2011) 32[6] where the use of the tools was initially recommended.

1.14   In December 2016 the Scottish Government published its Health and Social Care Delivery Plan [7]which identified the need for a coordinated approach to workforce planning across health and care services.

1.15   The Scottish Government published the Health and Social Care Standards in June 2017 and now in effect, set out what the public should expect when using care or social work services in Scotland. The Standards seek to provide better outcomes for everyone, to ensure that individuals are treated with respect and dignity, and that the basic human rights we are all entitled to are upheld. The objectives of the Standards are to drive improvement, promote flexibility and encourage innovation in how people are cared for and supported.

1.16   In 2017, the Scottish Government published Parts 1 and 2 of the National Workforce Plan for Health and Social Care, covering the NHS Scotland and social care workforce, with the aim of enabling better local and national workforce planning to support improvements in service delivery and redesign. Recommendation 4 in Part 2 stated that Scottish Government and COSLA would "*progress and co-produce social care and multi-disciplinary workforce planning tools that support the delivery of high quality care that reflects the new health and social care standards, and enable service redesign and new models of care. In developing this work, we will take account of progress with planned Scottish Government legislation that includes a focus on tools and methodology to inform and support decisions relating to staffing requirements, starting with nursing and midwifery in the NHS*". Part 3 of the workforce plan was published on 30 April 2018 and sets out the national and local enablers for developing and expanding multidisciplinary teams to enhance service provision in General Practice and wider primary care.

[6]http://www.isdscotland.org/Health-Topics/Workforce/Nursing-and-Midwifery/NMWWP/_docs/CEL2011_32.pdf
[7] http://www.gov.scot/Publications/2016/12/4275

The Bill Provisions

1.17   The Bill creates a coherent overall legislative framework for appropriate staffing across the health and care services landscape by setting out a requirement on Health Boards and organisations providing care services (those care services registered with and inspected by the Care Inspectorate) to ensure appropriate levels of suitably qualified staff for the provision of high quality care and to consider staffing requirements according to a set of principles. This requirement extends to all staff groups providing care. The Bill will essentially maintain but replace and restate the existing requirement placed on care service providers through the 2011 Regulations and 'level up' requirements on Health Boards to broadly mirror existing requirements on care service providers, making more explicit the requirements around the staffing element of workforce planning.

1.18   Additionally, for specific health care settings, initially those where a staffing tool is currently available the Bill sets out an updated methodology which Health Boards must apply including the use of specified staffing and professional judgement tools, and consideration of quality, local context and risk, and a requirement to report on how they use the tool and methodology when making decision about staffing requirements. The Bill permits the creation of new tools and the extension of the requirement to follow the methodology into other health settings, including other staff groups and multi-disciplinary teams.

1.19   On the care side, the Bill sets out a mechanism to develop tools and a methodology for care homes for adults, in the first instance. The Care Inspectorate will be given the ability to decide locally with care service providers if and where new tools are required. The Bill will give the Care Inspectorate a function to explore the development of a staffing methodology and tool and should one be developed, and the ability for Scottish Ministers, by regulation, to require care service providers to use it. It will be essential that any and all staffing methodologies and tools developed for the care sector reflect the unique demands and pressures of that sector. The development and validation of any methodologies and tools will be done in collaboration with professionals in that setting.

1.20   Accountability for compliance with the general duty, principles, methods and tools will sit with organisations, not individuals. Health Boards and care service providers' progress in meeting requirements will be monitored through existing local and national reporting and regulatory mechanisms and HIS and the Care Inspectorate scrutiny processes. The Care Inspectorate currently assesses staffing levels for all care service providers it registers and inspects and this function would continue.

Rationale for Government intervention

1.21   The link between safe and sustainable staffing levels and the delivery of high quality care in health is well established. For example, there is growing research evidence detailing the clear link between nursing and midwifery staffing and patient outcomes (including mortality and morbidity rates, patient safety, patient experience and other quality of care measures); staff experience and morale; and the efficiency of care delivery.[8][9][10][11] This relationship was reinforced in the Vale of Leven Hospital Inquiry Report (2014)[12] which made specific recommendations regarding nurse staffing and skill mix. A key theme from this and other high profile reports including the Francis Report on care quality at Mid Staffordshire NHS Foundation Trust[13] and the Berwick Review[14] regarding the quality of health care is the importance of organisations taking a systematic and responsive approach to determining staffing levels to ensure high quality care. For care services the Care Inspectorate have reported that scrutiny evidence suggests that having an effective and stable staff team is strongly associated with providing high-quality care[15].

1.22   The Scottish Government therefore recognises that safe staffing levels underpin effective high quality care. Effective workload and workforce planning will ensure that we have a workforce of the right size, skill mix and diversity delivering the services required to provide the best patient care. Although it has been mandatory for Health Boards to utilise the tools and methodology since 2013, there are inconsistencies in the way in which tools are applied and the extent to which the existing methodology is utilised to make informed decisions about staffing requirements. Therefore, the Scottish Government considers that there is benefit for placing the updated methodology and tools on a statutory footing to ensure more consistent application cross Health Board areas and ensure that approaches are further embedded at an organisational level. Enshrining this in law would help ensure a more consistent approach to staffing across all staff groups, contributing to better outcomes for patients, and provide public assurance that the right numbers of staff are in place to deliver person centred, effective care.

[8] http://www.journalofnursingstudies.com/article/S0020-7489(06)00244-6/abstract?cc=y
[9] http://www.rwjf.org/en/library/articles-and-news/2014/04/building-the-case-for-more-highly-educated-nurses.html
[10] http://www.safestaffing.org.uk/downloads/hospital-nurse-staffing-and-patient-mortality-nurse-burnout-and-job-dissatisfaction
[11] http://www.safestaffing.org.uk/downloads/nurse-staffing-and-inpatient-hospital-mortality
[12] http://www.valeoflevenhospitalinquiry.org/Report/j156505.pdf
[13] https://www.gov.uk/government/publications/report-of-the-mid-staffordshire-nhs-foundation-trust-public-inquiry
[14] https://www.gov.uk/government/publications/berwick-review-into-patient-safety
[15] https://hub.careinspectorate.com/media/596583/staff-vacancies-in-care-services-in-2016-a-statistical-report.pdf

1.23   The proposed Bill will contribute in particular to our ambitions that our public services are high quality, continually improving, efficient and responsible to local people's needs.

1.24   Underpinning the Government's *Purpose* and *Economic Strategy* are five Strategic Objectives: to make Scotland Wealthier and Fairer, Safer and Stronger, Healthier, Smarter and Greener. Ensuring appropriate staffing contributes to three out of the five objectives.

1.25   **HEALTHIER** – Help people to sustain and improve their health, especially in disadvantaged communities, ensuring better, local and faster access to health care. Requiring Health Boards and care services to ensure appropriate staffing and mandating the use of staffing methods will contribute to having the right staff in the right place at the right time ensuring the best health and care outcomes for service users and people experiencing care.

1.26   **WEALTHIER & FAIRER** – Enable businesses and people to increase their wealth and more people to share fairly in that wealth. Fairer in that ensuring appropriate staffing in line with the principles set out in the Bill, and ensuring that where applicable staffing methods and tools are applied consistently across all locations to ensure all service users and people experiencing care receive high quality care that meets their needs. The method encourages Boards to use substantively employed members of staff ensuring 'stable incomes' rather than temporary workers available through agencies thus contribute to a Wealthier and Fairer Scotland.

1.27   **SAFER & STRONGER** – Help local communities to flourish, becoming stronger, safer places to live, offering improved opportunities and a better quality of life. Provision of high quality care can enable and support people to continue to feel safe within their homes and therefore continue to live and thrive within their communities, making Scotland Safer and Stronger.

1.28   The Bill's provisions closely align with the National Performance Framework's purpose, values and the following national outcomes:

o   We are healthy and active;
o   We grow up loved, safe and respected so that we realise our full potential;
o   We are well educated, skilled and able to contribute to society
o   We have thriving and innovative businesses, with quality jobs and fair work for everyone;
o   We respect, protect and fulfil human rights and live free from discrimination;

2. Consultation

Public Consultation

2.1   The Scottish Government has undertaken two consultations on the Bill's proposals. For both consultations it has hosted stakeholder engagements events across Scotland. To aid the Bill's development which has been a collaboration with officials across the Government and relevant external stakeholders, a Strategic Programme Board has provided input from across health and care services on the direction and development of the Bill. A Bill Reference Group, - again drawn from health and care, was established to provide advice, expertise and support to the shape and content of the Bill.

2.2   As stated above, the Strategic Programme Board provided input on the strategic direction and development of the Bill to ensure that the underpinning policy was robust and proportionate in order to be achievable. The Board had and continues to have oversight of the Nursing & Midwifery Workload and Workforce Planning Programme (NMWWPP) so it can ensure that the infrastructure and systems are in place and maintained to support the aims of the legislation. The Strategic Programme Board has wide representation from both the health and social care sector ensuring it also represents care providers both from the commercial and social enterprise sector. The membership has representatives from COSLA, Scottish Care, Coalition of Care Providers in Scotland, the Care Inspectorate, NHS Education for Scotland (NES), NHS Chief Executive's. NHS Directors of Finance, Universities, NHS National Services Scotland (NSS), NHS Board Medical Directors, Healthcare Improvement Scotland (HIS), Scottish Executive Nurse Directors (SEND), NHS Board Human Resources, The Royal College of Nursing (RCN), The Royal College of Midwives (RCM), Unison, Allied Health Professions, Chief Officers of Integration Joint Boards and Scottish Government. The Strategic Programme Board meets quarterly.

2.3   The Bill Reference Group has focused on advising on the drafting of the Bill to ensure that the underpinning policy is robust, proportionate, and applied in a meaningful way in the correct settings, and that the over-arching principles underpinning the policy are consistent with the current operation of the integrated health and social care landscape. Representatives on this group span both the health and social care sector and again contain organisations that represent care providers both from the commercial and social enterprise sector. The membership has representatives from, Coalition of Care Providers in Scotland, Scottish Care, and Social Work Scotland, RCN, SEND, Royal College of Physicians, NHS Directors of Finance, Society of Local Authority Chief Executives (SOLACE), RCM, Scottish Partnership Forum (SPF), COSLA, Local Authority HR, Local Authority Finance, Unison, Chief Operating Officers Health & Social Care, Care Inspectorate, HIS, Scottish Social Services Council (SSSC), NHS Board HR Directors, British Medical Association (BMA), Academy of Medical Royal Colleges and Faculties in Scotland and the Scottish Government. The Group was tasked with engaging with their constituent stakeholders and organisations to gather a representative view on the development of policy and legislation. The group has met every six weeks from foundation to the introduction of the Bill.

2.4   The first consultation[16], ran from 12 April to 5 July 2017 and sought views on the proposals to enshrine safe staffing in law, starting with the nursing and midwifery workload and workforce planning tools as set out in the Scottish Government's 2016 Programme for Government. The proposals focussed on the application of evidence-based approaches to nursing and midwifery workload and workforce planning as there is already a methodology and suite of planning tools that are mandated for use in NHS Health Scotland. The consultation sought views on whether this approach should be extended to other staff groups and care settings when methodologies are developed.

2.5   In addition to this consultation a series of stakeholder engagement events were hosted across Scotland. An independent analysis of the consultation and engagement event responses[17] was published by the Scottish Government on 15 January 2018.

2.6   The Scottish Government considered the findings of the initial consultation with the Strategic Programme Board and Bill Reference Group, and considered both the implications of and opportunities presented by other important wider developments since the initial consultation was undertaken, notably the publication of Part 2 of the National Health and Social Care Workforce Plan.

2.7   These discussions and wider developments informed a refreshed set of legislative proposals which were published in a discussion document on 22 January 2018. A short secondary consultation ran for four weeks to 20 February 2018, supported by a series of public engagement events. This asked for respondents' views on refreshed legislative proposals, in particular on detailed proposals for care services, which took account of the themes from the initial consultation and subsequent engagement with stakeholders. The discussion paper specifically sought views on what support might be needed for the care service sector to support them in engaging with the development of any new staffing methodologies and tools.

Within Government

2.8   The developing Bill proposals have been subject to the normal process of consultation within the Government prior to submission of the Bill and accompanying documents to Parliament. This has included discussions with the following: Directorate for Health Workforce and Strategic Change; Directorate for Health Care Quality and Improvement; Directorate of Population Health; Directorate for Health Finance; Directorate for Health and Social Care Integration; Person Centred Quality Unit, Office of the Chief Social Worker, Education and Directorate for Children and Families ad Prisoner Health Care.

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[16] https://beta.gov.scot/publications/safe-effective-staffing-health-social-care/
[17] http://www.gov.scot/Publications/2017/12/5851

Business

2.9   Provisions in the Bill require Health Boards when commissioning services from independent health care providers, for example private hospitals carrying out hip replacements that they have regard to the need for appropriate staffing. However the majority of the business and social enterprises that the Bill could effect will be found in the care sector. The Government has therefore sought to engage their views throughout the consultation phase, recognising that unlike Health Boards, the development of tools and methodologies is in its infancy and their development cannot take place without the collaboration and engagement of the sector. The Bill therefor has provision to give a power to the Care Inspectorate to work with the sector to explore and develop the appropriate tools and methodologies that would become the relevant sector specific common method.

2.10   It was considered appropriate at this stage to engage with representative bodies, rather than the individual businesses to examine and explain the rational and high level costs and benefits of the proposals and principles which would inform the approach. It was therefore important that these representative organisations participated in the Strategic Programme Board and Bill Reference Group. Individual business were also engaged via the supporting consultation process which explored the risks and impact of the proposals and the sector needs and trading environments.

2.11   In the first consultation two representative organisations who represent non-public sector care providers submitted written responses. At stakeholder events held in conjunction there was service provider representation. In the second consultation one individual provider and three representative organisations of care providers submitted written responses to the second consultation. Seven individual providers including six which offer adult residential homes took part in the stakeholder events held in Aberdeen, Glasgow and Edinburgh together with their representative organisations.

2.12   The consultation responses together with the advice of the Strategic Programme Board and the Bill Reference Group have informed decisions regarding the scope of the Bill laid in Parliament; one of the most important of which has been to limit the initial exploration of developing tools and methodologies in care to Care Homes for older people. The Strategic Programme Board and Bill Reference Group, both of which include the representatives of care providers, will continue to operate through the Bill process and into implementation.

2.13   Individual providers and their representative bodies did submit written consultation responses and participate fully in stakeholder events. Firms' representative organisations have also kindly devoted time to engaging in the on-going stakeholder consultation process. However, unlike health where a methodology and tools already exist, no equivalent currently exists for care services. We have therefore not engaged directly in discussions with individual providers on this specific issue at this stage. At present there are no

concrete examples which would enable an informed discussion on the effect of future staffing tools and methodologies on care providers.

2.14   The Bill is clear that should a methodology and tool be developed for care homes for adults the Care Inspectorate must collaborate with representatives of the sector to do so. The process of developing a tool and method might follow a similar format to that used for the development of tools in health but this is still to be scoped and agreed. The development of a methodology and tool would be facilitated by the Care Inspectorate and a working group of representatives from staff groups and care providers from across the care home sector would lead the work. It would also enable a thorough examination of the concerns which arose in the consultation about the importance of considering the effect on small businesses. The working group would also oversee the testing of any methodology and tool developed to ensure it supported the delivery of high quality care and did not create undue burden on the services using it. Experience of timescales for developing a tool in health has been that the process for developing, testing and validating a tool takes four to seven years. This is dependent on the size and complexity of the service, availability of an evidence base and time taken to gain consensus from stakeholders.

2.15   Should a tool and methodology be developed for care services the requirement to use the method and tool would be made through a regulatory making power which will require an affirmative regulation and therefore will be accompanied by a Business Regulatory Impact Assessment and discussions with at least six business providers. Examining the requirements for tools and methodologies and the preparation of the documents for mandating their use will be the appropriate place to engage individual firms to gain a valued view of the proposals impact. Scottish Ministers will make this expectation and requirement clear in the proposed statutory Ministerial Guidance.

3.   Options

Option 1 – Do Nothing

3.1   Option 1 is to take no further action, and would not meet the Scottish Government's 2017 Programme for Government commitment to enshrine safe staffing in law.

3.2   <u>Health</u>

The required use of the existing suite of nursing and midwifery workload and workforce planning tools would continue. Such an approach would fail to alleviate the concerns around consistency of use and effective application of outcomes. Boards would not be required to undertake some of the additional steps in the methodology, such as informing staff of decisions and considering staff and patient views nor report on their use of the tools. There would be no requirement to ensure appropriate staffing, against a set of principles, for all staff groups delivering care, including those groups and areas not covered by the existing mandate.

3.3   Social Care

There would be no additional requirements placed on care services providers – the Care Inspectorate would continue to consider at registration and inspection the existing requirement in regulations for care service providers to ensure appropriate numbers of suitably qualified staff for the provision of high quality care. The recommendation set out in Part 2 of the National Health and Social Care Workforce Plan to co-produce workforce planning tools for the social services sector could be progressed if the legislation does not go ahead.

Option 2 – Develop Tools & Methodologies independent of regulation

3.4   Option 2 would be to develop tools and methodologies for use in both health and care settings without the use of legislation. This approach would also not meet the Scottish Government's Programme for Government commitment 2017 to enshrine safe staffing in law.

3.5   Health

This would involve adding to the existing suite of workforce and workload planning tools. It would not alter the concerns on consistency of application and action on outcomes. Boards would again not be required to undertake some of the additional steps that in the methodology, such as informing staff of decisions and considering staff and patient views that are included in the Bill. Nor would they be required to ensure appropriate staffing, against a set of principles, for all staff groups delivering care, including those groups and areas not covered by the existing mandate.

3.6   Social Care

Tools and methodologies could be developed for use within the care sector. However there would be no requirement to adopt their use if a provider wished to ignore their use. It would be possible for the Care Inspectorate to make the use part of a care provider's terms of registration or even to apply them through existing regulation making powers (section 78 of the Public Services Reform (Scotland) Act 2010). However, this would be imposing the tools through a regulatory approach. Without a regulatory approach concerns on consistency of application and action on outcomes remain.

Option 3 – Introduce Health and Care (Staffing) (Scotland) Bill

3.7   The Bill places a general duty to ensure appropriate staffing in Health Boards and care service providers. This requires them to ensure suitably qualified and competent individuals are working in such numbers as are appropriate for the health, wellbeing and safety of service users, and for the provision of high quality care. This duty covers all staff groups providing care. The general duties on Health Boards and care service providers will not impose minimum staffing requirements or fixed ratios, this would be at odds

with our established policy approach in Scotland and could potentially undermine innovation in service provision. Rather, the legislation will maintain local decision making and flexibility and support the ability to redesign and innovate.

3.8   The Bill creates a coherent overall legislative framework for appropriate staffing across the health and care service landscape by setting out the requirements on Health Boards and organisations providing care services (those care services registered with and inspected by the Care Inspectorate) to consider staffing requirements according to a set of principles.

3.9   For specified health care settings, initially those where a staffing level tool currently exists, the Bill sets out a requirement for Health Boards to follow a common staffing method, including the use of staffing tool. Health Boards must report on how they use the method when making decisions about staffing requirements.

3.10   The Bill permits the creation of new tools and the extension of the requirement to follow the common staffing method, including to cover other staff groups, in health settings.

3.11   The legislation does not seek to prescribe an approach to workload or workforce planning on the face of the bill in care settings, but rather to enable the development of suitable approaches for different settings in the future.

3.12   The Bill gives the Care Inspectorate the ability to decide locally with care service providers if and where new tools and methodologies are required, and to develop them. If there is an identified need for tools and/or methodologies in social care settings other than care homes for adults, then Ministers can be requested to use a regulation making power to include these settings within the legislation.

Sectors and groups affected

3.13   NHS Boards, Local Authorities, Integration Authorities and all care service providers registered with the Care Inspectorate will be required to take account of the general duty to ensure appropriate numbers of suitably qualified staff are in place and guiding principles listed in the Bill regardless of whether a tool and/or defined methodology is available when planning or commissioning a health or registered care service as defined by the Bill. Providers of these services would be required where a tool and/or defined methodology were available to operate the tool in line with the legislation and guidance. For the Health Service the existing tools which will be required to be used are listed in the Bill.

3.14   At present for Care Services the Bill does not require the use of any methodology and tool. The Scottish Government's position is that there is no tool or methodology presently ready to be mandated for use across any of the registered care services. The Bill empowers the Care Inspectorate to explore and develop a methodology and tool for Care Homes but only Care Homes for

adults, and it is the Scottish Government's intention to further define this through statutory guidance to Care Homes for Older People. It would then be for the Care Inspectorate to recommend to Scottish Ministers that they introduce affirmative regulations requiring the use of a methodology and tool that they had developed. Therefore at present no registered care provider would be affected by any requirement to follow a staffing methodology or use a staffing level tool.

Benefits and costs of options

Option 1 – Do Nothing

3.15   Benefits

- There would be no action and therefore no additional benefits.

3.16   Costs

- There would be no action and therefore no additional net costs to government or to providers of health and care services.
- Existing on-going costs for maintenance of the existing suite of health tools and digital infrastructure would exist in the absence of legislation.

Option 2 – Develop tools and methodologies independent of regulation

3.17   Benefits

- Increases the availability of tools in health
- Introduces methodologies and tools for care services.
- If used it would aid safe and sustainable staffing levels and the delivery of high quality care
- If used it could aid the planning and redesign of services.

3.18   Costs

- There is a cost to developing new tools and supporting their on-going use. The average non-recurring cost of developing one new staffing level tool for health is estimated at £538,000 and recurring costs for maintenance of all tools for health are estimates at £100,000 pa
- If used, there is a cost for training staff to apply the tools.

Option 3 – Introduce Health and Care (Staffing) (Scotland) Bill

3.19   Benefits

•   The use of the common staffing method will support Health Boards to ensure the right number and mix of staff are in place, with the right skills to enable the delivery of high quality care.
•   It will also aid safe and sustainable staffing levels
•   and support better patient outcomes (including mortality and morbidity rates, patient safety, patient experience and other quality of care measures) staff experience and morale; and the efficiency of care delivery.
•   Across health and care services the guiding principles ensure service providers consider a range of factors important for service users and staff to ensure safe and high quality services.
•   The use of the common staffing method will support Health Boards to plan and use staff and, where required, redesign services to ensure existing safety and quality measures continue to be met.
•   The use of the tools and methodology supports Health Boards to ensure they are using their resources in the best possible way including making savings on the use of supplementary and agency staff.
•   The purpose of including care services in the legislation is to enable the sector to build on and strengthen existing mechanisms and create a cohesive legislative framework across health and care settings.
•   The use of the tools for care services should be able to support consistency across the sector while aiding safe and sustainable staffing levels.
•   The use of the tools and methodology provides a more accurate information regarding demand which can in turn facilitate more effective use o staff.
•   By having parity in the legislation the expectation is that the legislation will allow, and support, innovative approaches to workload and workforce planning which take into account the roles of the range of staff groups employed across multiple organisations in the delivery of care.

3.20   Costs

•   The overall estimated costs of implementing the Bill are estimated at £2.1m in 2018-19, rising to a maximum of £3.0m in 2019/20 and decreasing to £1.5m by 2023/24. Beyond 2023/24 recurring costs are estimated at £1.4m per annum. Some of the costs are already incurred by the Scottish Administration and Health Boards. The majority of costs relate to the development and implementation of staffing tools. No significant additional costs are anticipated in respect of increased staffing levels in health or social care. Instead, it is anticipated that there will be an opportunity to maximise the effective use of existing total resources, potentially reducing spend on supplementary staffing
•   At present the Bill only provides the Care Inspectorate with a power to develop a staffing methodology and tool to support Care Homes for adults.

The development of a methodology and tool restricted to care homes for older people would require the Care Inspectorate to facilitate a working group of professionals from across the care homes for older people sector to develop a staffing method and would carry an estimated cost up to £200,000 per annum over three years.

- Until a tool is developed and mandated for use there would be no additional cost for Care Home Providers.
- Should a tool be developed and mandated for use, via regulations by Scottish Ministers there would be a cost of training for staff this is estimated to be £150,000 per year over two years across all care homes for older people which the Scottish Government would consider providing support for.

3.21   The Financial Memorandum which accompanies the Bill sets out the estimated cost in relation to tool and methodology development for care, based on those developed by the nursing and midwifery workload and workforce planning programme. However it should be noted that there is no requirement to develop a tool in this way.

3.22   It is recognised that it is challenging to predict the demand profile with complete accuracy. The Scottish Government is therefore committed to work in partnership with key stakeholders, including care home providers, local authorities and commissioning authorities, if any new information comes to light about cost estimates. The Scottish Government would be prepared to consider any such information. In particular, if a tool or tools are developed and used appropriately, any additional funding requirements as a consequence of this would be considered in funding decisions taken by the Scottish Government.

4.   Scottish Firms Impact Test

4.1   Through engagement with representative bodies including through the Strategic Programme Board and Bill Reference Group and via the consultation process which explored the risks and impact of the proposals it was assessed that the Bill would impact as follows.

Care Services

4.2   The latest available figures from the Scottish Social Services Council (SSSC) show that there were 1149 registered care homes for adults in 2016, with a workforce headcount of 53,680. This is the second largest workforce by headcount in the social care sector following housing support/care at home with 68,970[18]. Of the 1149 registered care homes for adults, 163 were in the public sector, 694 were in the private sector and 292 were in the voluntary sector[19].

4.3   As the Bill replaces and restates an existing requirement from regulations applying to care service providers it is not anticipated that there will be any significant increase in staffing levels as a result of the general duty or any

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[18] http://data.sssc.uk.com/images/WDR/WDR2016.pdf
[19] http://data.sssc.uk.com/images/WDR/ASW/AdultsServices_2016_FINAL.pdf

additional burdens on providers. The guiding principles applied to the general duty align with the existing principles for Health and Social Care integration delivery and planning and the Health and Social Care Standards and should therefore not carry any additional costs or burden on providers.

4.4   There is currently no staffing tool or method validated for use in care homes for adults. The Financial Memorandum associated with the Bill sets out an estimation of the cost of developing a method for care homes for older people, which is where the Scottish Government expects the Care Inspectorate to consider the need for staffing methodologies and tools in the first instance.   It is imperative that any staffing methods developed, for health or care services, are profession led and developed in collaboration with the sector. Applying the legislation within care settings to enable more effective workload and workforce planning will, therefore, require significant engagement with key stakeholders.

4.5   The Scottish Government will continue to engage with stakeholders as the Bill progresses through parliament. A full Business Regulatory Impact Assessment and Competition Assessment would be undertaken whenever new tools and methodology are being developed with the expectation that their use will be mandated by regulations introduced by Scottish Ministers.

Nurse Agencies

4.6   The effective application of staffing level tools and common staffing methodology, provides Health Boards with the opportunity to maximise the use of their staff. It also enables Health Boards to consider where service redesign may be appropriate based on analysis of information from the tools. Evidence to date, including case studies from NHS Boards, indicates that one outcome has been that some Health Boards have required fewer agency staff. Further detail is provided in the Financial Memorandum that accompanies the Bill. It is recognised that there is a legitimate spend on supplementary staffing where there are vacancies in order to maintain staffing levels.

4.7   Use of supplementary staffing is an inefficient way to plan staffing, and although it is acknowledged that there will be an on-going requirement for some supplementary staffing it is anticipated that as a result of application of the robust approach to planning staff resource requirements described in the Bill the need for supplementary staffing, and in particular use of agency staff, will reduce significantly. This will contribute to wider policy work currently on-going to reduce nurse agency spend

4.8   An Audit Scotland report – NHS Workforce Planning, published in July 2017[20] highlights agency spend as an area where efficiencies could be realised in NHS spending.   The use of agency staff results in higher staff costs (on average between 1.5 and 3 times more than equivalent funded establishment staff member) and the use of agency staff can impact on the quality of care.

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[20] http://www.audit-scotland.gov.uk/report/nhs-workforce-planning

4.9   However, as stated previously, the use of the tools and methodology has been mandated since 2013. Therefore the Bill places in legislation an already on-going practice and does not have a new impact of those Agencies already supplying additional staff to the NHS. It is also only one aspect of a programme of measures to ensure the effective and effective deployment, recruitment and retention of staff.

4.10   Already in operation is the Agency Framework Contract a preferred supplier contract on which the agencies the NHS use the most are invited to join. Agencies on this supply NHSScotland staff at NHS rates of pay, which means pay rates are capped for those on the contract. In return for being on this framework, agencies know that they are likely to be contacted to supply staff and are therefore more likely to get business. Through this the Scottish Government have capped the commission rates agencies on the framework contract limiting the profits the Agencies can make supplying the NHS with key front line staff. There are at present 80 suppliers who can provide agency nurses to NHSScotland. The majority of short term shifts are filled from the NHS Staff Bank, who are NHS staff on NHS contracts working at NHS rates of pay. There are over 35,000 nurses registered on the NHS Scotland Staff Bank.

Competition Assessment

4.11   Having applied the Competition and Markets Authority competition filter, the Bill does not have any appreciable negative impact on competition within the health and social care market. The Bill does not directly or indirectly limit the number or range of suppliers, nor does it limit the ability of suppliers to compete or reduce suppliers' incentives to compete vigorously.

4.12   The Bill does not set out or prescribe minimum staffing levels or fixed ratios of staff to service users. The legislation will support local decision making, flexibility and the ability to redesign and innovate across multi-disciplinary and multi-agency settings.

Test run of business forms

4.13   There are no new business forms proposed.

5.   Legal Aid Impact Test

5.1   The Scottish Government Access to Justice Team has confirmed that they do not anticipate that any proposals which may emerge as a result of this legislation will impact on legal aid expenditure.

6.   Enforcement, sanctions and monitoring

6.1   Accountability for the compliance with the general duty, principles and staffing tools and methods will sit with organisations, not individuals. In Health organisations' progress in meeting requirements would be reported and monitored through existing local and national reporting systems by Healthcare Improvement Scotland (HIS) quality of care reviews . In care settings

organisation' progress in meeting requirements would be monitored through existing Care Inspectorate scrutiny processes. The Care Inspectorate currently assesses staffing levels for all social care providers it registers and inspects and this function would continue.

Health Boards

6.2   The Bill requires Health Boards to report on how they meet the various duties which the Bill places on them. It is proposed that existing mechanisms for reporting will be used, and the detail of expected content of these reports will be provided to Health Boards in statutory guidance which will sit under the legislation. Healthcare Improvement Scotland (HIS) provides public assurance about the quality and safety of healthcare. It does this through development of evidence based advice, guidance and standards, provision of support for continuous improvement and through scrutiny of services. It is anticipated that HIS will monitor progress in meeting requirements through its scrutiny function as part of quality of care reviews, will provide improvement support where necessary and ultimately use existing powers of intervention if required. It is also anticipated that responsibility for maintenance of existing staffing tools and development of future tools will transfer to HIS for health care settings.

Care Services

6.3   The care services sector is far more diverse than the health sector with 13,481 registered service providers from the private, public and third sector[21]. All of these employers are responsible for planning, managing and supporting their staff and ensuring compliance with good employment practice and staff governments. In doing this they are supported by the work of the Care Inspectorate.

6.4   In addition to ensuring that registered care services comply with the relevant legislation, the Care Inspectorate focuses on supporting continual improvement, working with services, offering advice, guidance and sharing good practice in order that services provide high quality of care and support. Inspections of care services taken place at a frequency agreed by Scottish Ministers and are currently (at the time of writing) graded across four themes, care and support, environment, staffing and management and leadership. Should a staffing method and tools be developed for care homes for older people it would be used in this context, to support continual improvements and aid the Care Inspectorate in supporting service providers.

7.   Implementation and delivery plan

7.1   To ensure that training and infrastructure is in place in time to implement the Bill, the Bill will not come into force before April 2020.

7.2   The Bill Reference Group will be revised and reconstituted to become an Implementation Group, and membership will be agreed in collaboration with our key stakeholders from both the health and social care sides. The Group will

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[21] http://data.sssc.uk.com/component/sssscvisualisations/data-publications - Accessed 20/06/2018

oversee implementation, including development of guidance and potentially advising on any new tools/methodologies where required.

7.3 The Care Inspectorate will facilitate work to explore the development of a staffing method for care homes for older people. This work will be evidence based and profession led.

Post-implementation review

7.4 The Scottish Government's Strategic Programme Board will hold regular review meetings to monitor progress and provide necessary input.

7.5 It is the intention to state in the Statutory Guidance to accompany the Bill a requirement for those organisations overseeing the development and implementation of staffing tools and methods (the Care Inspectorate for methods and tools relating to care services, and probably HIS in relation to the common staffing method and tools for Health Boards) to keep them under review and, where necessary to revise or revoke them when no longer fit for purpose. The guidance will also require these organisations will carry out a review after 10 years and report Scottish Ministers their findings

8. Summary and recommendation

8.1 It is recommended that Option 3 – Introduce the Health and Care (Staffing) (Scotland) Bill is adopted.

8.2 Option 3 is the only option which ensures the creation of a cohesive legislative framework across health and social care.

8.3 Experience from the use of a staffing tool and method in health settings shows that, for the benefits of using a common staffing method to be fully realised, they must be embedded in the wider accountability structure and inspection regime. Further details on the possible costs and benefits of the Bill are laid out within the Financial Memorandum including the case studies.

9. Summary costs and benefits table

Option	Total benefit per annum: - economic, environmental, social	Total cost per annum: - economic, environmental, social - policy and administrative
1 – Do Nothing	None - There would be no coherent overall legislative framework for appropriate staffing across the health and care services Nor a consistency of application of the nursing and midwifery workload and workforce planning tools	While existing costs would continue there would be no new additional costs.

2 - Develop Tools and/or Methodologies independent of regulation	The availability for use of a tool and/or methodology to support 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.	The existing costs would continue added to this would be the cost of developing a tool. If used the cost of training staff in its use.
3 - Introduce Health and Care (Staffing) (Scotland) Bill	Building on Scotland's ground-breaking work on applying evidence-based nursing and midwifery workload and workforce planning methodologies and tools. The Bill will support both health and care services to develop multi-disciplinary working and service delivery models to ensure the safe and effective use of resources. As the link between safe and sustainable staffing levels and the delivery of high quality care is well established. There is growing evidence detailing the clear link between nursing and midwifery and patient outcomes (Including mortality and mortality rates, patient safety, patient experience and other quality of care issues. This will also achieve greater coherence across the health and care landscape through statutory requirements regarding appropriate staffing and its assurance.	The overall estimated costs of implementing the Bill are estimated at £2.1m in 2018-19, rising to a maximum of £3.0m in 2019/20 and decreasing to £1.5m by 2023/24. Beyond 2023/24 recurring costs are estimated at £1.4m per annum. Some of the costs are already incurred by the Scottish Administration and Health Boards. The majority of costs relate to the development and implementation of staffing tools. No significant additional costs are anticipated in respect of increased staffing levels in health or social care. Instead, it is anticipated that there will be an opportunity to maximise the effective use of existing total resources, potentially reducing spend on supplementary staffing Care At present the Bill provides the the Care Inspectorate to develop a staffing methodology and tool investigate the possibility of a tool to support Care Homes for adults if it is considered necessary. It is imperative that any staffing methods developed, for health or care services, are profession led and developed in collaboration with the sector. The Care Inspectorate would be expected to facilitate this work with contribution from the sector. It is estimated the development of a tool would carry an estimated cost for providers of

| | | care homes for older people of up to £200,000 per annum over three years. With a further cost of £150,000 per annum over two years for staff training. This cost would be met by the Scottish Government. |
| | | Until a staffing methodology and tool is developed and mandated for use there would be no additional cost for Care Home Providers. |

10.   Declaration and publication

I have read the Business and Regulatory Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

Signed:

Date: 30 August 2018

Minister's name Jeane Freeman MSP
Minister's title   Cabinet Secretary for Health and Sport

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