

Appendix 1: Health and Care Staffing (Scotland) Bill: A Briefing

Introduction

In the spring of 2017, the Scottish Government began consulting on [proposals](#) to require health and social care organisations to apply nationally agreed, evidence based workload and workforce planning methodologies and tools; and ensure that key principles underpin workload and workforce planning and inform staffing decisions.

In a [second consultation](#), the Scottish Government also proposed a duty that would maintain but replace the existing requirement placed on care service providers through Regulation 15 of The Social Care and Social Work Improvement Scotland (Requirements for Care Services) Regulations 2011; and 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.

This engagement culminated in the introduction to Parliament of the [Health and Care \(Staffing\) \(Scotland\) Bill](#) on 23 May 2018.

Overview

The aim of the Bill is to “provide a statutory basis for the provision of appropriate staffing in health and care service settings, thereby enabling safe and high quality care and improved outcomes for service users”. The Bill will place a legal requirement on NHS boards and care services to ensure appropriate numbers of suitably trained staff are in place, irrespective of where care is received. Expected commencement of duties is 2019-20.

The [Policy Memorandum](#) sets out the context in relation to the Health and Social Care Delivery Plan, health and social care integration and the new Health and Social Care Standards. The Policy Memorandum also highlights the role of the **Care Inspectorate** in relation to scrutiny and sets out a new statutory function for the organisation proposed through the Bill.

Key implications for the Care Inspectorate

The Bill includes provision for the Care Inspectorate to work in collaboration with the care sector to develop and validate appropriate staffing methodologies and tools. This will apply to care home settings for adults in the first instance, with powers for ministers to extend this function to other settings in the future.

This function was developed after the majority of those responding in consultation agreed with a proposed role for the Care Inspectorate in leading this work with the social care sector. However, there were suggestions that the work “should be led by the care service sector” and this is reflected in the legislation by requiring the Care Inspectorate to collaborate with the sector.

The Bill gives a new statutory function to the Care Inspectorate to work with the relevant sector to examine if a tool was appropriate, taking into account identified

need, and appropriate evidence. If there is agreement on the position it would be for the Care Inspectorate to then facilitate the development and validation of a tool, in collaboration with the sector, before bringing it to ministers to have its use placed in regulations. Throughout this process the Care Inspectorate would be required to work collaboratively with commissioning authorities, providers, recipients of services, partnership organisations, trade unions and professional bodies.

The Policy Memorandum also states:

It is the Scottish Government's intention that care homes for older people would be the first care setting for which a tool is developed, building on existing work on a dependency tool for use in care homes. Given the timescale experienced in developing a tool in health settings and the importance of ensuring that the process of developing a tool suits the care settings and does not simply impose a process developed in health settings, the Scottish Government anticipates that there will only be one tool developed in the next five years within the care setting.

Focusing on care homes for adults in the first instance acknowledges uncertainties raised during recent engagement on the workability of the policy approach in other settings. This will provide an opportunity to test out and evaluate an appropriate approach and its impact on quality of care and people's experiences, and will assist the Care Inspectorate and the Scottish Ministers in considering whether this scope should be extended in future.

If the legislation does not go ahead 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. 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."

Summary of the Bill

Part 1 – Guiding Principles for Staffing

Section 1 sets out guiding principles for the provision of health and care staffing, stating that the primary purpose of staffing for health and care services is to provide "safe and high-quality services" while taking account of a number of factors, such as needs and rights of 'service users' and the views and wellbeing of staff.

Section 3 also places a duty on local authorities and integration authorities to have regard to the guiding principles, and the duties imposed by the Bill on care service providers, when commissioning care services.

Part 2 – Staffing in the NHS

This part makes a number of changes to the National Health Service (Scotland) Act 1978 to introduce duties on ensuring appropriate staffing for all geographical Health Boards, Common Services Agency and Special Health Boards. New section 12IA makes equivalent provision for the NHS to the existing staffing duty on care service

providers in Regulation 15 of the Social Care and Social Work Improvement Scotland (Requirements for Care Service) Regulations 2011.

Part 3 – Staffing in Care Services

Section 6 restates in primary legislation the existing duty on care service providers in Regulation 15 of the Social Care and Social Work Improvement Scotland (Requirements for Care Service) Regulations 2011. Section 11 repeals the existing provision set out in Regulation 15.

Section 6 (1) places a duty on a person who provides a care service to ensure that they have a sufficient number of qualified and competent individuals working in their service to be able to provide care that ensures, at all times, both the health, wellbeing and safety of their service users and the provision of high quality care. Subsection (2) then lists the factors which providers must have regard to in ensuring they have the appropriate number of staff to achieve those aims, including the nature, size and aims of the service, as well as the number and needs of service users.

Section 7 replicates a further aspect of Regulation 15, setting out that a care service provider must ensure staff have received appropriate training for their role, as well as providing assistance to employees to obtain relevant qualifications. This includes providing time off work. Subsection (2) provides that the training duty includes the use of any staffing method prescribed in this Bill.

Section 8 allows ministers to publish guidance on carrying out duties introduced by the previous sections but establishes that certain people must be consulted, including the Care Inspectorate and others.

Section 9 defines key terms for this section, including that a “care service” means a service mentioned in section 47(1) of the Public Services Reform (Scotland) Act 2010 and that “working in a care service” includes working paid or unpaid, and working as a volunteer.

Section 10 amends the Public Services Reform (Scotland) Act 2010 by introducing powers for the Care Inspectorate to develop staffing methods for use by those providing care home services for adults, in the first instance, but with the possibility of extension to other care services through future regulations. If such methods are developed, the Care Inspectorate may recommend them to ministers, who can mandate their use by care services.

Section 10 (2) inserts the following after section 82 of the 2010 Act:

Chapter 3A
CARE SERVICES: STAFFING

82A Development of staffing methods

(1) SCSWIS may develop and recommend to the Scottish Ministers staffing methods for use by persons who provide—

- (a) care home services for adults, and
 - (b) such other care services as the Scottish Ministers may by regulations specify.
- (2) In developing such methods, SCSWIS must collaborate with—
- (a) the Scottish Ministers,
 - (b) Healthcare Improvement Scotland,
 - (c) every local authority,
 - (d) every integration authority,
 - (e) such persons as SCSWIS considers to be representative of the providers and users of the care services to whom the staffing methods are to apply,
 - (f) such trade unions and professional bodies as SCSWIS considers to be representative of individuals working in those care services, and
 - (g) such other persons as SCSWIS considers appropriate.
- (3) In undertaking such collaboration, SCSWIS and those other persons must have regard to—
- (a) any guidance issued by the Scottish Ministers about the operation of this section, and
 - (b) the guiding principles for health and care staffing set out in section 1 of the Health and Care (Staffing) (Scotland) Act 2019.
- (4) A staffing method developed and recommended under subsection (1) must include the use of staffing level tools designed to provide—
- (a) quantitative information relating to workload, based on the needs of service users, and
 - (b) quantitative or qualitative information relating to professional judgement, in order to assist in determining the appropriate staffing levels for a care service.
- (5) A staffing method developed and recommended under subsection (1) may include, in particular, the taking into account of—
- (a) the current staffing levels of a care service and any vacancies,
 - (b) the local context in which a care service is provided,
 - (c) the physical environment in which a care service is provided,
 - (d) any assessment of the quality of a care service,
 - (e) the needs of the users of a care service,
 - (f) comments by the users of a care service which relate to the duty imposed by section 6 of the Health and Care (Staffing) (Scotland) Act 2019,
 - (g) comments by the individuals working in a care service which relate to the duty imposed by section 6 of the Health and Care (Staffing) 5 (Scotland) Act 2019, and
 - (h) the standards and outcomes applicable to care services published by the Scottish Ministers under section 50.

82B Regulations: requirement to use staffing methods

- (1) Following the development and recommendation by SCSWIS of a staffing method for use by persons who provide care services, the Scottish Ministers may by regulations require the use of that method (with or without modifications) by persons who provide those care services.

- (2) Regulations under subsection (1) may prescribe—
- (a) the types of care settings and individuals working in a care service in relation to which, and whom, a staffing method is to be used,
 - (b) the staffing level tools for the purpose of section 82A(4), and
 - (c) the frequency at which such staffing level tools are to be used as part of a staffing method by persons who provide care services.

82C Interpretation of Chapter

In this Chapter—

“care home services for adults” means care home services provided for individuals who have reached the age of 18 years,

“care services” excludes care services provided by individuals who do not employ, or have not otherwise made arrangements with, other persons to assist with the provision of that service,

“integration authority” has the meaning given by section 59 of the Public Bodies (Joint Working) (Scotland) Act 2014, “working in a care service”, in relation to an individual, includes—

(a) working for payment or as a volunteer, and

(b) working under a contract of service or apprenticeship, a contract for services or otherwise than under a contract.”.

Financial implications

See Appendix B for a summary of the financial implications of the Bill, as set out in the [Financial Memorandum](#).

Scrutiny of the Bill

The [Health and Sport Committee](#) is leading scrutiny of the Bill. The Committee issued a call for evidence, receiving [70 submissions](#), followed by a range of oral evidence sessions. The Committee heard from witnesses such as Health Secretary Jeane Freeman, the Care Inspectorate, Healthcare Improvement Scotland, the Scottish Social Services Council and several representative bodies.

At the meeting on [25 September](#), Chief Inspector Adult Services Gordon Paterson set out our support for the Bill, noting that it strengthens the **Care Inspectorate**’s existing powers and places a greater focus on staffing. He explained how the **Care Inspectorate** and HIS had worked together and in co-production with stakeholders in the development of the Health and Social Care Standards, suggesting a similar approach would be used. Noting previous comments regarding a potential “conflict of interest” in relation to a regulator leading on the tool, Gordon also highlighted the way in which Safer Recruitment guidance had been taken on board by the sector as good practice while also being regulated against.

See Appendix C for a summary of the Committee’s findings set out in a [Stage 1 report](#). A debate will now take place in the Scottish Parliament on 6 December.