

## **Appendix 3: Health and Sport Committee Stage 1 report on the Health and Care (Staffing) (Scotland) Bill: A Briefing**

### **Introduction**

On 26 November 2018, the Scottish Parliament's Health and Sport Committee published its [Stage 1 report](#) on the proposed [Health and Care \(Staffing\) \(Scotland\) Bill](#). The report came after a call for evidence, which received 70 submissions, and a range of oral evidence sessions involving witnesses such as Health Secretary Jeane Freeman, the **Care Inspectorate**, Healthcare Improvement Scotland (HIS), the Scottish Social Services Council and several representative bodies.

The Committee supports the general principles of the Bill but outlines a number of concerns, as set out below. This briefing will focus on provisions affecting social care and issues relating to the role of the **Care Inspectorate**.

### **Part 1 – Guiding principles for staffing**

The Committee describes the guiding principles as “laudable” but notes the view of several witnesses that they are “so general and multi-factorial as to leave plenty of scope for subjective judgement”.

#### Process or outcomes?

The Committee notes the Scottish Government's view that outcomes should not be in the Bill but suggests it should be considered “whether to place on the face of the Bill an additional guiding principle linking the outcome focus to the health and care standard and quality measures”.

#### Accountability

The Committee highlights concerns regarding a lack of clarity on where accountability for the provision of appropriate staffing lies. The Committee suggests this is “even more complicated” in relation to social care, asking how it would be possible to hold the commissioner accountable if services do not meet requirements and why commissioners are not referenced in the Bill.

#### Assurance

The Committee questions the accessibility of tools and how the public will be assured sufficient staff are in place. The Scottish Government is asked for an update on work with staff to ensure reporting routes are better understood and “how this can be clarified within the legislation for all care settings”.

#### Wellbeing of staff

The Committee asks the Scottish Government for more detail on how the wellbeing of staff will be achieved, given increasing demands on health and social care staff.

### The professional voice

The Committee stresses the need for the role of professional judgement to be more prominent in the Bill and for clearer direction in relation to which roles will be included in professional judgement.

### Integration of and parity within health and social care

The Committee says it is concerned to ensure the Bill supports the integration agenda, asking the Scottish Government for:

- detail on how this will be supported and what guidance will be provided to ensure joint working continues
- confirmation on the role of Allied Health Professionals (AHPs) and how the Bill will be changed to reflect their input in health and social care
- information on how it will be ensured that the legislation will not result in funds going towards nurses and midwives to the detriment of AHPs and multidisciplinary working
- how concerns from the social care sector regarding skewed resources towards the acute sector can be mitigated.

## **Part 2 – Staffing in the NHS**

### Compliance and sanctions

The Committee notes HIS' view that their role in relation to the Bill should mirror the **Care Inspectorate's** and asks for confirmation from the Scottish Government on how "ease of scrutiny and the means to spread and incorporate learning and best practice" will be ensured.

## **Part 3 – Staffing in care services**

### Existing governance and regulation of social care services

The Committee sets out the role of the **Care Inspectorate** in relation to regulation, scrutiny and improvement, and highlights the new Health and Social Care Standards.

### Is the Bill required for social care services?

The Committee suggests that witnesses were "generally unsure" whether Part 3 of the Bill was required, with a majority feeling that "there was already a clear statutory requirement for ensuring appropriate staffing in the care sector and the Bill was not needed for this purpose".

While the Committee states that it could see "no rationale to ultimately treat this sector any differently from the NHS", it recognises the different environments that exist across the delivery of health and social care, as well as the different context in terms of issues such as funding, commissioning,

ownership and governance. It also stresses the need to ensure the Bill “does not impinge on the requirements of the social care sector in particular, to be responsive and to be able to devise innovative solutions (as a disparate sector) to particular pressures”.

With that in mind, the Committee asks for detail from the Scottish Government on “how it will be ensured such differences will be factored into the development of new tools and methodologies” and notes the need for the same criteria to be applied to tools, when introduced, as set out across Part 2.

### The role of the Care Inspectorate

The Committee notes that there were some concerns about the **Care Inspectorate** having lead responsibility for producing tools and that the Bill articulates “a need for the **Care Inspectorate** to collaborate, not for co-production”.

The Committee concludes:

- We welcome the confirmation from COSLA they have received assurances from the Scottish Government any tools for the social care sector will be co-produced with the sector and service users. We think it is essential this is the case. We suggest the Scottish Government make this explicit on the face of the Bill allowing guidance to further develop how this is to be achieved.
- We note references within the Policy Memorandum relating to the **Care Inspectorate** agreeing with the sector the need for a tool. To avoid any confusion we recommend section 10 of the Bill is amended to confirm that the sector will require to agree the need for a tool which will then allow the detail to be covered in guidance.

### Wider recruitment and retention issues

The Committee notes concerns that the Bill is being introduced into a workforce under pressure from general recruitment and retention problems nationally, and recognises uncertainty regarding how the outcomes of the Bill can be achieved without a link to wider national workforce planning.

The Committee suggests it is unclear what the implications will be if a service is unable to meet the requirements of the Bill due to circumstances such as the above, and asked for information from the Scottish Government on how the Bill will address such a situation.

### **Finance Committee consideration**

Issues raised in the Finance Committee’s consideration of the Bill included lack of training costs, costs associated with reviewing the staffing tool and costs to other social care providers.