

# **Safe and Effective Staffing in Health and Social Care**

**Consultation on proposals to enshrine safe staffing  
in law, starting with the nursing and midwifery  
workload and workforce planning tools**

**April 2017**

# **Safe and Effective Staffing in Health and Social Care – Consultation on proposals to enshrine safe staffing in law, starting with the nursing and midwifery workload and workforce planning tools.**

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## Executive Summary

Taking a rigorous, evidence based approach to workload and workforce planning is important to ensure safe and effective staffing that reflects patients' care needs and promotes a safe environment for service users and staff.

Scotland has led the rest of the UK in developing and implementing a ground-breaking evidence based approach to nursing and midwifery workload and workforce planning.

*A Plan For Scotland: The Scottish Government's Programme For Scotland 2016-17* confirmed the intention to enshrine safe staffing in law, starting with the nursing and midwifery workforce planning tools.

This consultation paper proposes the introduction of legislation that would require organisations providing health and social care to:

- Apply nationally agreed, evidence based workload and workforce planning methodologies and tools.
- Ensure that key principles – notably 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.

Proposals are intended to:

- Strengthen and enhance arrangements already in place to support continuous improvements and transparency in workforce planning and employment practice across Scotland.
- Enable consideration of service delivery models and service redesign to ensure Scotland's health and social care services meet the needs of the people they serve.
- Provide assurance – including for patients 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 set out in this consultation document focus 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 planning tools that are mandated for use in NHSScotland as part of Local Delivery Planning. However, the consultation proposes that this approach could be extended to other staff groups and care settings when methodologies are developed.

The document outlines existing approaches to nursing and midwifery workload and workforce planning, within the context of wider duties and arrangements, to ensure high quality care, workforce planning and staff governance; details the proposed requirements on organisations; describes the Scottish Government consultation process; and invites views on a number of issues. A consultation questionnaire, respondent information form and partial Business Regulatory Impact Assessment are provided as Annexes.

## 1. Introduction

- 1.1 A range of statutory duties and mechanisms are already in place to ensure and assure provision of high quality care, effective workforce planning and staff governance. However, the proposals set out in this consultation would take a further step to ensure - and assure - safe and effective staffing.
- 1.2 This consultation paper invites views on proposals to introduce legislation that will require organisations providing health and social care to:
  - Apply nationally agreed, evidence based workload and workforce planning framework, methodologies and tools.
  - Ensure that key principles – notably 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.
- 1.3 Proposals are intended to:
  - Strengthen and enhance arrangements already in place to support continuous improvements and transparency in workforce planning and employment practice across Scotland.
  - Enable consideration of service delivery models and service redesign to ensure Scotland's health and social care services meet the needs of the people they serve.
  - Provide assurance – including for patients 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.
- 1.4 The proposals focus 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 planning tools that are mandated for use in NHSScotland as part of Local Delivery Planning and which cover 98% of nursing and midwifery care settings. However, the consultation proposes that this approach could be extended to other settings and staff groups when methodologies are developed.

## Background

- 1.5 The Healthcare Quality Strategy for NHSScotland<sup>1</sup> published in May 2010 developed three Quality Ambitions:
- **Safe** – There will be no avoidable injury or harm to people from healthcare, and an appropriate, clean and safe environment will be provided for the delivery of healthcare services at all time.
  - **Person-centred** – Mutually beneficial partnerships between patients, their families and those delivering healthcare services which respect individual needs and values and which demonstrates compassion, continuity, clear communication and shared decision-making.
  - **Effective** – The most appropriate treatments, interventions, support and services will be provided at the right time to everyone who will benefit, and wasteful or harmful variation will be eradicated.
- 1.6 The Healthcare Quality Strategy is the approach and shared focus for all work to realise the 2020 Vision<sup>2</sup>.
- 1.7 The priorities for action identified in the Everyone Matters 2020 Workforce Vision<sup>3</sup> are:
- **Healthy organisational culture** – creating a healthy organisational culture, in which our NHSScotland values are embedded in everything we do, enabling a healthy, engaged and empowered workforce.
  - **Sustainable Workforce** – ensuring that the right people are available to deliver the right care, in the right place, at the right time.
  - **Capable Workforce** – ensuring that everyone has the skills needed to deliver safe, effective, person-centred care.
  - **Workforce to Deliver Integrated Services** – developing a health and social care workforce across NHS Boards, local authorities and third party providers to deliver integrated services.
  - **Effective Leadership and Management** – leaders and managers lead by example and empower teams and individuals to deliver the 2020 Vision.
- 1.8 The Health and Social Care Delivery Plan, published in December 2016 (available at <http://www.gov.scot/Publications/2016/12/4275>) sets out our programme to enhance health and social care services. The Health and Social Care Delivery Plan recognises that actions which have greatest impact on delivery must be prioritised. It focuses on three areas often referred to as the Triple Aim: better care; better health; better value. The Delivery Plan states that “we need services that have the capacity, focus and workforce to continue to address the increasing pressures of a changing society. Our approach to primary and community care on the one hand, and acute and hospital services on the other, should support the critical health challenges our society faces, not least with respect to an ageing population”. A National

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<sup>1</sup> <http://www.gov.scot/Publications/2010/05/10102307/8>

<sup>2</sup> <http://www.gov.scot/Resource/0042/00424225.pdf>

<sup>3</sup> <http://www.workforcevision.scot.nhs.uk/>

Health and Social Care Workforce Plan is planned for publication in Spring 2017. The Plan will present an opportunity to refresh guidance for the production of NHS workforce plans; and introduce workforce planning which provides an overall picture for health and social care staff.

- 1.9 Local authorities and other social care service employers operate various approaches to workforce planning for their workforce. This was recognised in a 2016 research project supported by the Social Work Service Strategic Forum.

### Ensuring a sustainable nursing and midwifery workforce

- 1.10 There is growing research evidence showing the link between nursing and midwifery staffing and patient outcomes (including mortality rates, patient safety, patient experience and other quality of care measures); staff experience and morale; and the efficiency of care delivery<sup>4 5 6 7</sup>. It is vital to have right number and mix of staff in place, with the right skills to enable the provision of high quality care.
- 1.11 This relationship was reinforced in the Vale of Leven Hospital Inquiry Report (2014)<sup>8</sup>, which made specific recommendations regarding nurse staffing and skill-mix. The Francis Report (2013) on care quality at Mid Staffordshire NHS Foundation Trust<sup>9</sup> also made a broad range of recommendations covering local and national NHS management, governance, quality assurance and staffing. A common theme from these reports is the importance of organisations taking a systematic and responsive approach to determining staffing levels to ensure high quality care.
- 1.12 Scotland's nursing and midwifery workforce plays a critical role in delivering high quality care across the health and social care landscape. Nurses and midwives comprise the largest part of the NHSScotland workforce, with 59,709.1 WTE staff in post at 31 December 2016 (of these, 43,820.9 WTE are registered staff). There are a significant number of registered nurses working in various settings other than the NHS, including over 2,000 registered nurses working in primary care in 2015 who are employed by Scottish General Practices. There were also approximately 7,000 registered nurses working in other social services in 2014 based on data from the Scottish Social Services Council. They are providing care across a diverse range of hospital and community settings and are practicing in a rapidly evolving and dynamic service.

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<sup>4</sup> [http://www.journalofnursingstudies.com/article/S0020-7489\(06\)00244-6/abstract?cc=y](http://www.journalofnursingstudies.com/article/S0020-7489(06)00244-6/abstract?cc=y)

<sup>5</sup> <http://www.rwjf.org/en/library/articles-and-news/2014/04/building-the-case-for-more-highly-educated-nurses.html>

<sup>6</sup> <http://www.safestaffing.org.uk/downloads/hospital-nurse-staffing-and-patient-mortality-nurse-burnout-and-job-dissatisfaction>

<sup>7</sup> <http://www.safestaffing.org.uk/downloads/nurse-staffing-and-inpatient-hospital-mortality>

<sup>8</sup> <http://www.valeoflevenhospitalinquiry.org/Report/j156505.pdf>

<sup>9</sup> <https://www.gov.uk/government/publications/report-of-the-mid-staffordshire-nhs-foundation-trust-public-inquiry>

- 1.13 The Scottish Government, in partnership with key stakeholders including employers, partnership organisations and Higher Education Institutions, is already doing a great deal to ensure a sustainable and capable nursing and midwifery workforce, and promote and assure high quality care. Key building blocks are already in place, including evidence based workload and workforce planning tools; higher numbers of staff; strengthened student intake planning; a clear strategy for nursing and midwifery education; and work to transform nursing roles to meet the current and future needs of Scotland's health and social care system. Work is in train to develop and roll-out *Excellence in Care*, Scotland's national approach to assuring nursing and midwifery care, which will include an agreed set of quality measures and indicators. Work is also ongoing to develop a refreshed vision for nursing in Scotland, which will support and sustain nurses' contribution to improving health and delivering care towards 2030 and beyond.

### Scotland's Nursing and Midwifery Workload and Workforce Planning Programme

- 1.14 In its 2002 report "Planning Ward Nursing Legacy or Design"<sup>10</sup> Audit Scotland identified that little was known about how NHS systems plan nursing and midwifery workforce or how staffing levels were set at ward level. The report identified that improvements were required and recommended a consistent approach to workforce planning, which included consideration of quality measures.
- 1.15 As a result, the Scottish Executive Nurse Directors group (SEND) commissioned the Nursing and Midwifery Workload and Workforce Planning Programme (NMWWPP) in 2004. Its aims were to develop a nationally validated, fit for purpose approach to measuring nursing and midwifery workload and providing information on staffing establishments required for that workload. The subsequent report<sup>11</sup> made 20 recommendations which included a requirement for:
- A national standardised approach to nursing and midwifery workforce planning.
  - Development of workforce tools which take account of patient acuity, professional judgement and include nationally agreed predictable absence allowance and leadership time to support setting of nurse/midwife staffing establishments.
  - Development of indicators that allow accurate national comparisons of workload and workforce planning data.
  - Inclusion of flexible working arrangements.
  - Planning reduction in nurse agency spend.
  - Education and training in workforce planning for senior charge nurses and professional leaders.

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<sup>10</sup> [http://www.audit-scotland.gov.uk/docs/health/2002/nr\\_021212\\_ward\\_nursing.pdf](http://www.audit-scotland.gov.uk/docs/health/2002/nr_021212_ward_nursing.pdf)

<sup>11</sup> [http://www.isdscotland.org/Health-Topics/Workforce/Nursing-and-Midwifery/NMWWPP/\\_docs/0013466.NMWWPP%20Project%202004.pdf](http://www.isdscotland.org/Health-Topics/Workforce/Nursing-and-Midwifery/NMWWPP/_docs/0013466.NMWWPP%20Project%202004.pdf)

- 1.16 Research has shown that while workforce and workload measurement tools offer useful assistance in planning nursing and midwifery workforce requirements, there is no perfect tool which can provide definitive staff requirements on its own, (Arthur and James 1994 Carr-Hill and Jenkins-Clarke 1995, Hughes 1999)<sup>12 13</sup>. However, evidence suggests that application of validated workforce tools with the addition of a consistent professional judgement approach improved sensitivity of outcome.<sup>14</sup>
- 1.17 Following review of the evidence, the NMWWPP concluded that in order to establish nurse/midwifery staffing requirements:
- Specific workforce/workload tools which take account of specialty and patient dependency should be applied.
  - A nationally agreed professional judgement approach should be applied, as a minimum.
  - Quality measures should be considered, recommending that as patient dependency measures offered a means of recording changing patient acuity and associated workload, this type of methodology should be used.
  - Current funded establishment and local context should be considered.
- 1.18 The report went on to state that a combination of tools should be used, with all services using a nationally agreed professional judgement approach as a minimum.
- 1.19 Since 2004, Scotland has led the rest of the UK in developing a series of ground-breaking nursing and midwifery workload and workforce planning tools. The NMWWPP has made significant progress and we now have a validated framework, methodology and suite of 12 workload measurement and workforce planning tools that cover 98% of nursing and midwifery service areas. Further details of the approach are set out in the next section. The work of the NMWWPP has been overseen by a steering group which has wide stakeholder engagement and representation including Executive Nurse Directors and professional leaders and partnership bodies.
- 1.20 The approach and suite of tools are endorsed by Scottish Nurse Directors and professional bodies, mandated for use in NHSScotland as part of Local Delivery Planning and are widely used. Although significant progress has been made, the proposals within this consultation will ensure more consistent application and broader use within and across NHS Board areas and ensure that approaches are further embedded at an organisational level.

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<sup>12</sup> <http://onlinelibrary.wiley.com/doi/10.1111/j.1365-2648.1994.tb01121.x/abstract>

<sup>13</sup> <http://onlinelibrary.wiley.com/doi/10.1046/j.1365-2648.1995.22020221.x/abstract>

<sup>14</sup> [http://www.who.int/hrh/tools/size\\_mix.pdf](http://www.who.int/hrh/tools/size_mix.pdf)

## Staff governance

- 1.21 NHSScotland recognises that effective Staff Governance is an investment in patient care. Staff who feel engaged, involved and valued provide for a strong workforce which is essential to achieve continuous improvement in delivering healthcare services. NHSScotland's commitment to Staff Governance was reinforced by the legislative underpinning within the NHS Reform (Scotland) Act 2004. This legislation aims to improve how NHSScotland's diverse workforce is treated at work. The **NHSScotland Staff Governance Standard**<sup>15</sup> and framework has also been developed to support staff on this basis and is therefore the key policy document to support this legislation.
- 1.22 The Freedom to Speak Up Review, chaired by Sir Robert Francis QC, highlighted the importance of encouraging staff to speak freely about any concerns, and the important contribution this makes to patient safety. Although it relates entirely to NHS England, its report, published in 2015<sup>16</sup>, provided independent advice and recommendations aimed at creating an open and honest reporting culture. Many of the recommended actions outlined in the Report from the Freedom to Speak Up Review are already in place or being developed in NHSScotland.

## 2. This Consultation

- 2.1 This consultation paper invites views on proposals to introduce legislation that will require organisations providing health and social care services to apply nationally agreed, evidence based workload and workforce planning framework, methodologies and tools; ensure that key principles – notably 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.
- 2.2 The introduction of these requirements are intended to further ensure – and assure - safe and effective staffing and strengthen and enhance the arrangements already in place to support continuous improvements in workforce planning and employment practice across Scotland.
- 2.3 The proposals build on the progress made through the Nursing and Midwifery Workload and Workforce Planning Programme. Ongoing experience and learning from this programme, nationally and locally, will inform detailed development of the proposed legislation.
- 2.4 This paper has been divided into the following sections:
- 3: Existing approaches
  - 4: Proposed requirements on organisations

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<sup>15</sup> <http://www.staffgovernance.scot.nhs.uk/what-is-staff-governance/staff-governance-standard/>

<sup>16</sup> [http://freedomtospeakup.org.uk/wp-content/uploads/2014/07/F2SU\\_web.pdf](http://freedomtospeakup.org.uk/wp-content/uploads/2014/07/F2SU_web.pdf)

- 5: Monitoring of the statutory requirements
- 6: Equality Considerations
- 7: Responding to the consultation paper

Annex A: Consultation Questionnaire and Respondent Information Form  
Annex B: Partial Business and Regulatory Impact Assessment

### 3 Existing Approaches

#### Quality health care and workforce planning

- 3.1 Under the National Health Service (Scotland) Act 1978 NHS Boards in Scotland have a duty to put and keep in place arrangements for the purpose of monitoring and improving the **quality of health care** which it provides to individuals, and to **workforce plan**.
- 3.2 The National Workforce Planning Framework 2005<sup>17</sup> and the National Workforce Planning Framework 2005 Guidance<sup>18</sup> established the requirement for NHSScotland to workforce plan.
- 3.3 Revised guidance issued in 2011<sup>19</sup> sets out the six step methodology to Integrated Workforce Planning and is applied across the whole NHSScotland workforce. In essence, the six steps are:
  - Step 1 – Defining the plan.
  - Step 2 – Service Change - what you want to do?
  - Step 3 – Defining the Required Workforce – what you need to achieve this?
  - Step 4 – Workforce Capability – what do you have at present?
  - Step 5 – Action Plan – what needs to happen to deliver the change required?
  - Step 6 – Implementation and Monitoring.
- 3.4 Although Integration Joint Boards (IJBs) are not employers themselves they are required to produce workforce development/organisational development plans. These plans must include (at a minimum) information about the organisational development of NHS Boards, local authorities and IJBs in relation to integration functions, and the arrangements in place to develop and support staff in the delivery of those functions. Nurses and midwives working within IJBs may be employed by the NHS Board, Local Authority or other care provider; therefore, the duty will flow from the employing NHS Board to be discharged by the IJB.

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<sup>17</sup> <http://www.gov.scot/Resource/Doc/927/0017088.pdf>

<sup>18</sup> [http://www.sehd.scot.nhs.uk/mels/HDL2005\\_52.pdf](http://www.sehd.scot.nhs.uk/mels/HDL2005_52.pdf)

<sup>19</sup> [http://www.sehd.scot.nhs.uk/mels/CEL2011\\_32.pdf](http://www.sehd.scot.nhs.uk/mels/CEL2011_32.pdf)

- 3.5 The Integration Planning Principles which underpin the Public Bodies (Joint Working) (Scotland) Act 2014 also states that the main purpose of services which are provided in pursuance of integration functions is to improve the wellbeing of service-users. It also states that strategic commissioning plans which are developed to deliver integration functions must also protect and improve the safety of service users, within this context the views of Integration Authorities must be taken into account.

### Staff governance

- 3.6 NHSScotland is committed to staff governance and ensuring that all staff feel engaged and valued, contributing to a strong workforce. By investing in a strong workforce, NHSScotland is able to deliver better patient care and continuous improvement in delivering health and care services.
- 3.7 NHSScotland has a set aim of being an exemplary employer. To help it achieve this, the Staff Governance Standard sets out what staff can expect from their Board and the corresponding responsibilities for all staff. The **Staff Governance Standard** requires all NHSScotland Boards to demonstrate that staff are:
- Well informed.
  - Appropriately trained and developed.
  - Involved in decisions.
  - Treated fairly and consistently, with dignity and respect, in an environment where diversity is valued.
  - Provided with a continuously improving and safe working environment, promoting the health and wellbeing of staff, patients and the wider community.

More information about **Staff Governance** can be found at:

<http://www.staffgovernance.scot.nhs.uk/>

### Staff experience

- 3.8 NHSScotland is also committed to enhancing the Employee Experience. Improved staff experience should, ultimately, benefit patient care - mechanisms such as staff surveys and the roll-out of [iMatter](#). Staff Experience Continuous Improvement Model is used to find out how staff feel, identify actions required to support staff, address issues to enhance staff experience and, in turn, improve patient care. More information about **Employee Experience** can be found at:
- <http://www.staffgovernance.scot.nhs.uk/improving-employee-experience/>

### Creating an open and honest reporting culture

- 3.9 We are committed to ensure NHSScotland is a listening organisation. There are a range of mechanisms in place to raise concerns, including discussion with line managers, clinical risk management and incident reporting systems, as well as the Duty of Candour.

- 3.10 The Duty of Candour procedure, and regulations to be made using the powers combined in the Health (Tobacco, Nicotine etc. and Care) (Scotland) Act, will require organisations to make sure that they are open and honest with people when an unintended or unexpected incident resulting in death or harm has happened. It will also require training and support to be provided for staff involved with disclosure, and support to be available to people who have been affected by an instance of harm. Organisations will be required to prepare an annual report on the duty of candour – this will include a requirement to outline procedures and support available to staff and persons affected by incidents.
- 3.11 NHSScotland staff should have the confidence to speak up without fear and in the knowledge that any genuine concern will be treated seriously and investigated properly. The Scottish Government in partnership with key stakeholders, has developed a package of measures to promote, encourage and support whistleblowing and whistleblowers in NHSScotland.
- 3.12 NHS Boards are responsible for ensuring local policies and practice support an open and transparent culture where staff feel it is safe to speak up and concerns can be raised and addressed. These are set out in the Implementing and Reviewing Whistleblowing Arrangements in NHSScotland PIN Policy<sup>20</sup>.
- 3.13 The NHSScotland Confidential Alert Line (NCAL) provides an additional level of support to NHSScotland staff should they feel unsure about how or whether to whistleblow.

### Existing approaches to nursing and midwifery workforce planning

- 3.14 The use of evidence based methods and tools is a critical part of making staffing decisions, and ensuring decisions are based on patient care needs, which support effective resource allocation.
- 3.15 There has been significant financial investment in the NMWWPP since publication of the report in 2004.
- 3.16 The NMWWPP has made significant progress and we now have a validated framework, methodology and suite of 12 innovative ground breaking workload measurement and workforce planning tools for 98% of NHSScotland nursing and midwifery service areas as detailed below:
- Adult inpatient.
  - Mental Health and Learning Disability.
  - Neonatal.
  - SCAMPS (Paediatric).
  - Community Nursing.
  - Community Children's and Specialist Nursing.
  - Clinical Nurse Specialists.
  - Small Wards.

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<sup>20</sup> <http://www.gov.scot/Resource/Doc/364407/0123806.pdf>

- Perioperative.
- Maternity.
- Professional Judgement.
- Emergency Department/Emergency Medicine – A multi-disciplinary approach has been utilised in the development the Emergency Department/Emergency Medicine (EDEM) tool which takes account of the workload attributed to both nursing and medical staff rather than being specific only to nursing.

3.17 The tools have been developed utilising robust methodology consistent with the recommendations in the 2004 report and tested extensively across NHSScotland before being confirmed as fit for purpose. Systems and processes are in place to allow collation of data nationally, and an education and a training pack has been developed for professional leaders<sup>21</sup>.

Further information is available at <http://www.isdscotland.org/Health-Topics/Workforce/Nursing-and-Midwifery/NMWWP/>

3.18 The tools enable evidence based decision making on workforce planning and establishments. The tools do not simply count numbers of patients, but contain formulae - based on rigorous statistical analysis - to calculate the workload attributed to the individual patient. This in turn calculates the Whole Time Equivalent (WTE) staffing requirement for that workload. For example, the Adult Inpatient tool measures all aspects of work and includes direct and indirect care which is all patient related work, including record keeping, liaison, communications, associated work which includes general non-clinical workload such as clerical, administration, cleaning, stocking, errands, meetings and personal time.

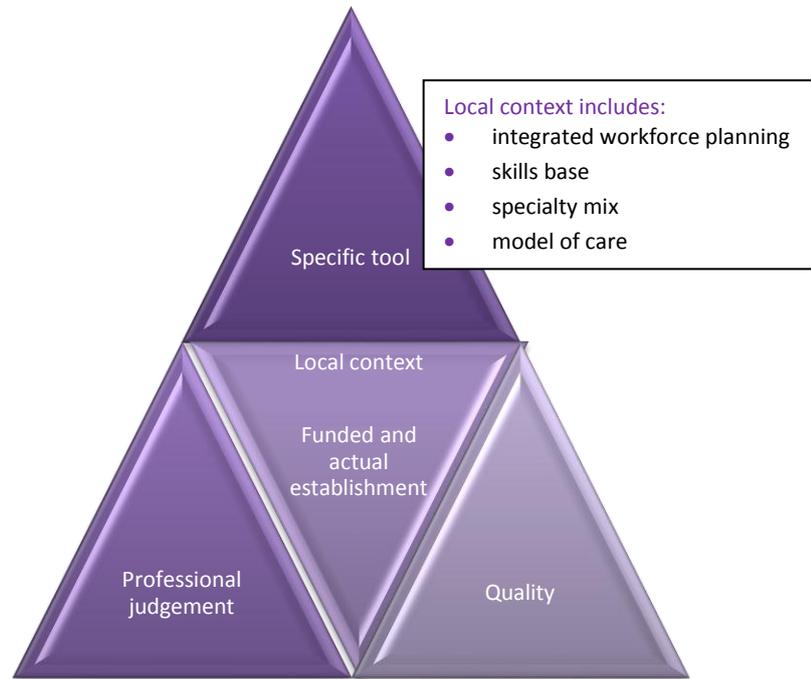
3.19 Quality was also identified as being a key part of nursing and midwifery workload and workforce planning. It is therefore accepted in principle that NHSScotland, in line with best evidence, utilise these approaches as a national standard for workload and workforce planning practice. This principle is often referred to as triangulation. The NHSScotland triangulated approach means that there are three main sets of indicators on which to base judgements (Figure 1). These are obtained from three sources:

- Outcome of the specialty specific workload measurement tool.
- Outcome of the Professional Judgement Tool.
- Quality Measures (in the future these will be identified as part of the Excellence in Care programme of work with specific indicators identified for each of the tools).

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<sup>21</sup>[http://www.isdscotland.org/Health-Topics/Workforce/Nursing-and-Midwifery/NMWWP/docs/nursing\\_midwifery\\_workforce\\_toolkit.pdf](http://www.isdscotland.org/Health-Topics/Workforce/Nursing-and-Midwifery/NMWWP/docs/nursing_midwifery_workforce_toolkit.pdf)

**Figure 1: Triangulated approach to workload measurement**



- 3.20 Other helpful indicators included in the assessment are budget establishment and actual establishment which includes the total nursing and midwifery resource used including supplementary staffing, i.e. bank and agency.
- 3.21 The process ensures confidence through reliability and validity, and the tools provide Senior Charge Nurses and Midwives, Team Leaders and other managers with a consistent approach upon which to base decisions to support workload, workforce and skill-mix changes. They can also help to identify potential educational needs.
- 3.22 The workload tools are all available on an IT platform hosted by Scottish Standard Time System (SSTS). This is accessible to all NHS sites in Scotland and available for use by all registered users. Each ward area, unit and department has been classified as a roster location and it is therefore essential that the information held by SSTS about these locations is accurate. This information includes specialty beds.
- 3.23 Application of the tools and frequency of use is dependent on the clinical area and patient type. Initially there is an annual review, but this may increase to an 18-24 month review as the tools are embedded in workforce planning arrangements. Service delivery and practice changes may also result in an earlier review if it is felt that the workload tools need further development to keep abreast of change.

3.24 Management Executive Letter (MEL) 2005 Revised Guidance was re-issued in December 2012 for the development of NHS Board Local Delivery Plans <sup>22</sup>. The guidance mandated the application of available nursing and midwifery workload workforce planning tools as part of Local Delivery Planning. Its aim is to assure Safe, Effective Person-Centred Care across NHSScotland, ensuring that nursing and midwifery workload and workforce planning is consistent, systematic and evidence based throughout the country. Specifically, it stated:

- From April 2014, all Boards will use all available and appropriate workload tools to inform nursing and midwifery workforce planning, this will be evidenced in all Local Delivery Plans from 2014.
- All areas will have used a triangulation process incorporating the use of the Professional Judgement tools and measures of quality to validate the data.
- Local Delivery Plans from April 2014 will contain a paragraph outlining which tools they have used, which areas/wards the tools have been applied to, and the frequency of use.
- The use of nursing and midwifery workload and workforce planning tools and processes to ensure partnership working and frontline staff engagement should be further described within every Board's Workforce Plan narratives and reflected in the projections.
- Out-with the Local Delivery Plan process, Boards should use the appropriate tool to provide information for the required staffing for any new builds, or when as a result of service redesign, a short term pressure, there is a fundamental change to the role, function or location of a service unit or team. This should also follow a triangulation approach.

### **Current position and future challenges and opportunities**

- 3.25 Although the use of the workload and workforce planning tools has been mandated for Boards since 2013 and the approach is more widely used, there is evidence from the national SSTS platform that indicates incomplete application in all nursing and midwifery job families across NHS Board areas.
- 3.26 The mandate did not include the requirement to apply the results, evidence analysis, or risk assess the impact that the application of the tools and triangulation process has had on decisions relating to staffing levels, assurance that there is safe and effective staffing or development of workforce plans.

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<sup>22</sup> <http://www.gov.scot/Publications/2012/12/8405>

## Enshrining safe staffing in law

- 3.27 In summary, a range of duties and mechanisms are already in place to ensure quality of care, workforce planning and staff governance. Scotland has led the rest of the UK in the development and implementation of evidence-based approaches to nursing and midwifery workload and workforce planning. Significant progress has been made. However, the proposals in this consultation take a further step by placing this approach on a statutory footing to further ensure - and assure - safe and effective staffing.

## 4. Proposed Requirements on Organisations

- 4.1 The proposed new requirements would:

- Apply to organisations providing health and social care services, including but not limited to NHS Boards, Local Authorities and all organisations providing services regulated by the Care Inspectorate. It would also apply to organisations providing services on behalf of Integration Joint Boards.
- Be applicable only in settings and for staff groups where a nationally agreed framework, methodology and tools exist.

- 4.2 Requirements would apply at an organisational level and would not apply to individuals providing services.

- 4.3 The intention is that there will be a requirement that an organisation providing health and social care services must apply nationally agreed, evidence-based workload and workforce planning framework, methodologies and tools; ensure that key principles – notably consideration of professional judgement, local context and quality measures – underpin workload and workforce planning and inform staffing decisions; and monitor and report on how they have done this and provide assurance regarding safe and effective staffing.

### What would be required of organisations

- 4.4 Organisations would be required to:

- Ensure a consistent and systematic application of available nationally validated workload and workforce planning framework and tools.
- Ensure consistent and systematic application of available, nationally agreed professional judgement methodology and tools.
- Ensure a consistent and systematic review of quality measures, provided by a nationally agreed quality framework.

- Apply and analyse outputs from the tools utilising a triangulated approach to justify decisions and describe the process of assurance that there is safe and effective staffing in place.
- Actively foster an open and honest culture of safety and learning, which reflect the values in “Everyone Matters 2020 Workforce Vision”<sup>23</sup> and Staff governance and other relevant standards where all staff feel safe to raise concerns regarding safe and effective staffing, and have mechanisms to do this.
- Ensure that professional and operational managers and leaders have appropriate training in workforce planning in accordance with current guidance.
- Ensure effective, transparent monitoring and reporting arrangements are in place to provide information on how requirements have been met and to provide organisational assurance that safe and effective staffing is in place, including provision of information for staff, patients and the public.

## **QUESTIONS**

### **Purpose**

- 1. Do you agree that introducing a statutory requirement to apply evidence based workload and workforce planning methodology and tools across Scotland will help support consistent application?**
- 2. Are there other ways in which consistent and appropriate application could be strengthened?**

### **Scope**

- 3. Our proposal is that requirements should apply to organisations providing health and social care services, and be applicable only in settings and for staff groups where a nationally agreed framework, methodology and tools exist.**
  - 3A Do you agree that the requirement should apply to organisations providing health and social care services?**
  - 3B Do you agree that the requirements should be applicable in settings and for staff groups where a nationally agreed framework, methodology and tools exist?**
- 4. How should these proposed requirements apply or operate within the context of integration of health and social care?**

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<sup>23</sup> <http://www.gov.scot/Resource/0042/00424225.pdf>

## Requirements

5. A triangulated approach to workload and workforce planning is proposed that requires:
- Consistent and systematic application of nationally agreed professional judgement methodology and review of tools to all areas where current and future workload and workforce tools are available.
  - Consistent and systematic consideration of local context.
  - Consistent and systematic review of quality measures provided by a nationally agreed quality framework which is publicly available as part of a triangulated approach to safe and effective staffing.

Do you agree with the proposal to use a triangulated approach?

6. Are there other measures to be considered as part of the triangulation approach to workload and workforce planning? If yes, what measures?
7. Given existing staff governance requirements and standards are there sufficient processes and systems in place to allow concerns regarding safe and effective staffing to be raised?
8. If not, what additional mechanisms would be required?
9. Do you agree with the proposal to require organisations to ensure that professional and operational managers and leaders have appropriate training in workforce planning in accordance with current guidance?
10. Do you agree with the proposal to require organisations to ensure effective, transparent monitoring and reporting arrangements are in place to provide information on how requirements have been met and to provide organisational assurance that safe and effective staffing is in place, including provision of information for staff, patients and the public?

## Future approach and priorities

11. Do you agree with our proposal to consider extending the requirement to apply nursing and midwifery workload and workforce planning approach to other settings and/or staff groups in the future?
- A. If yes, which staff groups/multi-disciplinary teams should be considered?
- B. If yes, which other clinical areas/settings should be considered?

## **Risks and unintended consequences**

- 12. Are there any risks or unintended consequences that could arise as a result of the proposed legislation and potential requirements?**
- 13. What steps could be taken to deal with these consequences?**

## 5. Monitoring of the Statutory Requirement

- 5.1 The intended aims of the legislation can only be met where there is compliance with any duty. We propose that organisations' progress in meeting requirements be monitored in the following ways:
- Monitored locally through local reporting arrangements.
  - Monitored nationally through existing reporting and regulatory mechanisms, including the workforce planning aspects of the Local Delivery Plans (LDPs); Staff Governance monitoring; reporting arrangements for national workload and workforce planning programmes; and through existing performance monitoring, scrutiny and inspection processes, where appropriate.
  - Excellence in Care will support the triangulation approach to safe and effective staffing through the national quality measure source. NHS Boards will use the Care Assurance Information Resource (CAIR) to support quality assurance and improvement both locally and nationally. The CAIR contains workforce, and a range of other indicators, that will be used to demonstrate safe, effective and person-centred care.
- 5.2 The intention is to consider the extent to which requirements can be monitored using the existing reporting and regulatory mechanisms in Scotland, to embed organisational requirements within systems that are already established and familiar to providers of health and social care services. Examples of these are outlined below in respect of Scottish Government, Healthcare Improvement Scotland and Care Inspectorate reporting and follow up. The consequences that will be applied to those who do not demonstrate that they are implementing the duty will vary depending on the organisation concerned.
- 5.3 NHS Boards are publicly accountable for the delivery of key aspects of financial and service performance. A number of mechanisms are in place nationally and locally to support them. Some examples of relevant monitoring and reporting arrangements are provided below.
- 5.4 NHS board accountability is monitored and maintained through a process of Annual Reviews, which are conducted in public during the summer. Scottish Government Ministers, supported by Health and Social Care Directors, meet with all NHS Board Chairs, Chief Executives and their teams in a publically accessible venue, to discuss progress made on key priorities, performance against LDP Standards and the contribution that the Board has made towards delivery of the Scottish Government's National Outcomes.
- 5.5 NHS Board Chief Executive and senior management teams also undertake mid-year stock-takes where they meet with Scottish Government Health and Social Care Directors to take stock of in-year performance and also to look ahead to the forthcoming year.

- 5.6 Statistics indicating progress against Local Delivery Plans (LDP) Standards are reported publicly throughout the year and a summary of overall annual performance is provided through the NHSScotland Chief Executive's Annual Report. Regular progress against LDP Standards are also publicly reported through the Scottish Government's performance website [Scotland Performs](#).
- 5.7 NHS Boards are required to include in their Local Delivery Plans, an outline of their local Everyone Matters: 2020 Workforce Vision Implementation plans for 2017-18. This will include a brief summary of the local actions they are taking to ensure workforce capacity and capability. Local Delivery Plan Guidance for 2017/18, available at [http://www.sehd.scot.nhs.uk/dl/DL\(2017\)01.pdf](http://www.sehd.scot.nhs.uk/dl/DL(2017)01.pdf) reaffirmed that the application of the Nursing and Midwifery Workload and Workforce Planning Tools should be documented in the development of Workforce Plans and workforce projections.
- 5.8 NHS Boards' progress against the actions set out in the **Everyone Matters Workforce Vision Annual Implementation Plan** is measured in the following ways:
- Monitored locally through local reporting arrangements.
  - Monitored nationally through the Workforce Planning and HEAT Targets aspects of the Local Delivery Plans (LDPs).
  - Taking into account Annual Reviews, Staff Governance Monitoring, Employee Experience Measures and [iMatter](#).
- 5.9 Each element of the **Staff Governance Standard** Framework is assessed annually to seek assurance from Boards that each of the five elements of the Standard are being carried out locally and that all staff are: well informed; appropriately trained and developed; involved in decisions; treated fairly and consistently, with dignity and respect, in an environment where diversity is valued; and provided with a continuously improving and safe working environment, promoting health and wellbeing of staff, patients and the wider community. This includes ensuring that local policies which are compliant with PIN Policies are implemented.
- 5.10 Each NHS Board's **Staff Governance Committee** should make sure that arrangements are in place to ensure continuous delivery of the Staff Governance Standard. Responsibilities include overseeing the commissioning of structures and processes which ensure that delivery against the Standard is being achieved; monitoring and evaluating strategies and implementation plans relating to people management, and, providing the Scottish Government with staff governance information to enable national monitoring arrangements.
- 5.11 Organisational performance against the Staff Governance Framework is also reviewed by the Scottish Workforce and Staff Governance Committee (SWAG) as guardians of the Staff Governance Standard, on behalf of the Scottish Partnership Forum (SPF).

- 5.12 Local Partnership Forums are also directly involved in assessing the performance of NHS Boards as employers through the use of the nationally agreed staff experience and staff governance monitoring arrangements. The assessment does not rely on a single form of measurement, and local health systems will have the flexibility to agree and set their own priorities.
- 5.13 NHS Boards' application of available nursing and midwifery workload and workforce planning tools is monitored through **Nursing and Midwifery Workload and Workforce Planning Programme** monitoring and reporting arrangements, which currently include:
- Reviewing available **analytical data regarding application of available tools** across ward areas, units and departments within and across NHS Boards, covering hospital and community settings.
  - Reviewing how NHS Boards' application and analysis of the nursing and midwifery workload and workforce planning tools is **reflected in the development of Workforce Plans and workforce projections**.
- 5.14 Although IJBs are not employers themselves, they are accountable for planning staffing needs for the services delegated to them by local authorities and NHS Boards. They play a key role in shaping workforce demand and in supporting 'intelligent forecasting'. A legislative requirement operates on IJBs to produce workforce development and organisational development plans.
- 5.15 IJBs must also publish strategic commissioning plans which identify local need and set out a vision and plan for how these needs will be met, working in partnership with local staff, communities and partners. The Integration Planning Principles which underpin the Public Bodies (Joint Working) (Scotland) Act 2014 state that the main purpose of services which are provided in pursuance of integration functions is to improve the wellbeing of service-users, and that strategic commissioning plans which are developed to deliver integration functions must also protect and improve the safety of service users. Within this context the views of Integration Authorities must be taken into account.

### Scrutiny

- 5.16 Related **methods of scrutiny** also contribute to a wider set of resources and continuous processes where evidence is used to drive improvement in quality.
- 5.17 **Healthcare Improvement Scotland (HIS)** was created through the Public Services Reform (Scotland) Act 2010, which amended the National Health Service (Scotland) Act 1978 ("the 1978 Act"), on 1 April 2011. HIS' stated purpose is to drive improvements that support the highest possible quality of care for the people of Scotland.
- 5.18 The 1978 Act places a number of statutory duties upon HIS, including:
- A general duty of furthering improvement in the quality of healthcare.

- A duty to provide information to the public about the availability and quality of services provided under the health service.
- When requested by the Scottish Ministers, a duty to provide to the Scottish Ministers advice about any matter relevant to the health service functions of HIS.

5.19 The 1978 Act sets out the functions of Scottish Ministers that HIS is to exercise:

- Functions in relation to supporting, ensuring and monitoring the quality of healthcare provided or secured by the health service including providing quality assurance and accreditation.
- Functions in relation to supporting, ensuring and monitoring the discharge of the duty to encourage public involvement of each NHS Board.
- Functions in relation to supporting, ensuring and monitoring the discharge of the duty to encourage equal opportunities of each NHS board (insofar as that duty is relevant to the quality of health care and the duty of public involvement described above).
- Functions in relation to the evaluation and provision of advice to the health service on the clinical and cost effectiveness of new and existing health technologies including drugs.

5.20 The 1978 Act also sets out the general principles in accordance with which HIS must exercise its functions, which includes that:

- The safety and well-being of all persons who use services provided under the national health service and independent health care services are to be protected and enhanced.
- Good practice in the provision of those services is to be identified, promulgated and promoted.
- Provision of those services taking account of guidance and information published or endorsed by HIS should be promoted and encouraged.

5.21 The 1978 Act section 10I provides HIS with powers to inspect any service provided by the National Health Service. Section 10J of the Act sets out the powers HIS has to inspect independent health care services, in pursuance of its general duty of furthering improvement in the quality of health in Scotland.

5.22 HIS is introducing new comprehensive assessments of the quality of healthcare – **Quality of Care Reviews**. This is part of a programme of work to implement a new framework-based approach to comprehensive assessment and external quality assurance of the care provided in NHSScotland.

- 5.23 The aim is to deliver an operational review methodology that is proportionate, sustainable and focused on quality improvement. The proposed methodology is currently being tested with the service and is due for phased implementation across Scotland from Autumn 2017. It will include tools and guidance which have been co-produced with stakeholders to support internal self-assessment and external validation of the quality of care.
- 5.24 HIS are working closely with other programmes of work where there are overlaps and interfaces to the quality of care reviews programme, such as the **National Health and Social Care Standards** and **Excellence in Care**.
- 5.25 The **Care Inspectorate (formal name Social Care and Social Work Improvement Scotland (SCSWIS))** was established on 1 April 2011 under the Public Services Reform (Scotland) 2010 Act as the new single improvement and scrutiny regulator in Scotland for social work and social care (taking over the functions of its predecessors, the Care Commission, the Social Work Inspection Agency and some of the functions of HMIE).
- 5.26 The Care Inspectorate's statutory duties include:
- Furthering improvement in the quality of social services.
  - Undertaking joint inspections of services for adults and children.
  - Providing information to the public about the availability and quality of social services.
  - Providing advice to Ministers about any matter relevant to the functions of the Care Inspectorate.
  - Taking into account standards and outcomes relating to care services and social work services and the Scottish Social Services Council's codes of practice in the performance of its functions.
- 5.27 The Care Inspectorate regulate around 14,000 individual care services. This includes registering/deregistering and inspecting services, supporting services to improve, investigating complaints and undertaking enforcement action. The Care Inspectorate also scrutinise the delivery of local authority social work functions.
- 5.28 The Care Inspectorate assess workforce planning/experience at the point of registration to see if this is appropriate for the service.
- 5.29 Sections 54 to 56 of the Public Bodies (Joint Working) (Scotland) Act 2014 amend the Public Services Reform (Scotland) Act 2010 and The National Health Services (Scotland) Act 1978 to extend the remit of the Social Care and Social Work Improvement Scotland and Healthcare Improvement Scotland (HIS) to inspect the **planning, organisation or co-ordination of the services that Health Boards and Local Authorities delegate, as set out within their Integration Schemes, to Integration Authorities**.

5.30 We will discuss with HIS how compliance with proposed requirements under the legislation fits with Quality of Care reviews.

## **QUESTIONS**

### **Monitoring Requirements**

- 14. Do you agree with the proposals to use existing performance and monitoring processes to ensure compliance with the legislative duty and associated requirements?**
- 15. In what other ways could organisations' progress in meeting requirements be monitored?**
- 16. What should the consequences be if organisations do not comply with requirements?**

## 6. Equality Considerations

- 6.1 The Scottish Government's Quality Strategy for NHS Scotland asserts our aim of delivering safe, effective and person-centred care. To do so we need to understand the needs of each person who uses health and social care services. Therefore, in the development of our proposals we will ensure that we identify any equality impacts for people with a protected characteristic (as defined by the Equality Act 2010).
- 6.2 In line with usual practice, a partial Business Impact Assessment has been prepared and has been published alongside this consultation. We are undertaking an Equality Impact Assessment (EQIA) which will allow us to explore these further. The results of the EQIA, along with a Privacy Impact Assessment (PIA) and Children's Rights and Wellbeing Impact Assessment (CRWIA) will be published on the Scottish Government's website once completed.
- 6.3 The Government does not consider that a Strategic Environmental Impact Assessment is required.
- 6.4 This consultation provides an opportunity to obtain stakeholders' views on any possible equality impacts, including on those with protected characteristics. The responses to our consultation will assist in our development of a full EQIA.

## QUESTIONS

### Equality Consideration

17. **Do you anticipate any of the proposed options outlined in this consultation will have a direct or indirect positive or negative impact on any protected equality characteristics?**

The nine protected equality characteristics are age, sex, gender reassignment, sexual orientation, race, religion or belief, pregnancy and maternity, disability, and marriage and civil partnership.

## 7. Responding to the Consultation

- 7.1 We are inviting responses to this consultation by 4 July 2017.
- 7.2 Please respond to this consultation using the Scottish Government's consultation platform, Citizen Space. You view and respond to this consultation online at <https://consult.scotland.gov.uk/nursing-and-midwifery/safe-and-effective-staffing-in-health-care-setting>. You can save and return to your responses while the consultation is still open. Please ensure that consultation responses are submitted before the closing date of 4 July 2017.
- 7.3 If you are unable to respond online, please complete the Respondent Information Form (see "Handling your Response" below) to:

Dawn Sungu  
Chief Nursing Officer's Directorate  
2 ER, St Andrew's House  
Regent Road  
Edinburgh EH1 3DG

### Handling your response

- 7.4 If you respond using Citizen Space (<http://consult.scotland.gov.uk/>), you will be directed to the Respondent Information Form. Please indicate how you wish your response to be handled and, in particular, whether you are happy for your response to be published.
- 7.5 If you are unable to respond via Citizen Space, please complete and return the Respondent Information Form attached included in this document. If you ask for your response not to be published, we will regard it as confidential, and we will treat it accordingly.
- 7.6 All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

### Next steps in the process

- 7.7 Where respondents have given permission for their response to be made public, and after we have checked that they contain no potentially defamatory material, responses will be made available to the public at <http://consult.scotland.gov.uk>. If you use Citizen Space to respond, you will receive a copy of your response via email.
- 7.8 Following the closing date, all responses will be analysed and considered along with any other available evidence to help us. Responses will be published where we have been given permission to do so.

## Comments and complaints

- 7.9 If you have any comments about how this consultation exercise has been conducted, please send them by email to [safeandeffectivestaffing@gov.scot](mailto:safeandeffectivestaffing@gov.scot).

## Scottish Government consultation process

- 7.10 Consultation is an essential part of the policy-making process. It gives us the opportunity to consider your opinion and expertise on a proposed area of work.
- 7.11 You can find all our consultations online: <http://consult.scotland.gov.uk>. Each consultation details the issues under consideration, as well as a way for you to give us your views, either online, by email or by post.
- 7.12 Consultations may involve seeking views in a number of different ways, such as public meetings, focus groups, or other online methods such as Dialogue (<https://www.ideas.gov.scot>). Copies of all the written responses received to a consultation exercise (except those where the individual or organisation requested confidentiality) are placed in the Scottish Government library at Saughton House, Edinburgh (K Spur, Saughton House, Broomhouse Drive, Edinburgh, EH11 3XD, telephone 0131 244 4565).
- 7.13 Responses will be analysed and used as part of the decision making process, along with a range of other available information and evidence. We will publish a report of this analysis for every consultation. Depending on the nature of the consultation exercise the responses received may:
- Indicate the need for policy development or review.
  - Inform the development of a particular policy.
  - Help decisions to be made between alternative policy proposals.
  - Be used to finalise legislation before it is implemented.
- 7.14 While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.



## ANNEX A

### Respondent Information Form

**Please Note** this form **must** be completed and returned with your response.

Are you responding as an individual or an organisation?

- Individual  
 Organisation

Full name or organisation's name

Phone number

Address

Postcode

Email

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

- Publish response with name  
 Publish response only (without name)  
 Do not publish response

**Information for organisations:**

The option 'Publish response only (without name)' is available for individual respondents only. If this option is selected, the organisation name will still be published.

If you choose the option 'Do not publish response', your organisation name may still be listed as having responded to the consultation in, for example, the analysis report.

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

- Yes  
 No

## Consultation Questionnaire

### Proposed purpose and scope

**Question 1 - Do you agree that introducing a statutory requirement to apply evidence based workload and workforce planning methodology and tools across Scotland will help support consistent application?**

Yes  No

Comments

**Question 2 - Are there other ways in which consistent and appropriate application could be strengthened?**

Yes  No

Comments

**Question 3 - Our proposal is that requirements should apply to organisations providing health and social care services, and be applicable only in settings and for staff groups where a nationally agreed framework, methodology and tools exist.**

**3A Do you agree that the requirement should apply to organisations providing health and social care services?**

Yes  No

**3B Do you agree that the requirements should be applicable in settings and for staff groups where a nationally agreed framework, methodology and tools exist?**

Yes  No

Comments

**Question 4 - How should these proposed requirements apply or operate within the context of integration of health and social care?**

Comments

### Requirements

**Question 5 - A triangulated approach to workload and workforce planning is proposed that requires:**

- Consistent and systematic application of nationally agreed professional judgement methodology and review of tools to all areas where current and future workload and workforce tools are available.
- Consistent and systematic consideration of local context.
- Consistent and systematic review of quality measures provided by a nationally agreed quality framework which is publicly available as part of a triangulated approach to safe and effective staffing.

**Do you agree with the proposal to use a triangulated approach?**

Yes  No

Comments

**Question 6 - Are there other measures to be considered as part of the triangulation approach to workload and workforce planning? If yes, what measures?**

Yes  No

Comments

**Question 7 - Given existing staff governance requirements and standards are there sufficient processes and systems in place to allow concerns regarding safe and effective staffing to be raised?**

Yes  No

Comments

**Question 8 - If not, what additional mechanisms would be required?**

Comments

**Question 9 - Do you agree with the proposal to require organisations to ensure that professional and operational managers and leaders have appropriate training in workforce planning in accordance with current guidance?**

Yes  No

Comments

**Question 10 - Do you agree with the proposal to require organisations to ensure effective, transparent monitoring and reporting arrangements are in place to provide information on how requirements have been met and to provide organisational assurance that safe and effective staffing is in place, including provision of information for staff, patients and the public?**

Yes  No

Comments

**Future approach and priorities**

**Question 11 - Do you agree with our proposal to consider extending the requirement to apply nursing and midwifery workload and workforce planning approach to other settings and/or staff groups in the future?**

Yes  No

**A. If yes, which staff groups/multi-disciplinary teams should be considered?**

Comments

**B. If yes, which other clinical areas/settings should be considered?**

Comments

### Risks and unintended consequences

**Question 12 - Are there any risks or unintended consequences that could arise as a result of the proposed legislation and potential requirements?**

Yes  No

Comments

**Question 13 - What steps could be taken to deal with these consequences?**

Comments

### Monitoring requirements

**Question 14 - Do you agree with the proposals to use existing performance and monitoring processes to ensure compliance with the legislative duty and associated requirements?**

Yes  No

Comments

**Question 15 - In what other ways could organisations' progress in meeting requirements be monitored?**

Comments

**Question 16 - What should the consequences be if organisations do not comply with requirements?**

Comments

**Equality consideration**

**Question 17 - Do you anticipate any of the proposed options outlined in this consultation will have a direct or indirect positive or negative impact on any protected equality characteristics?**

(The nine protected equality characteristics are age, sex, gender reassignment, sexual orientation, race, religion or belief, pregnancy and maternity , disability, and marriage and civil partnership).

Yes  No

Comments

**END OF QUESTIONS**

## Partial Business and Regulatory Impact Assessment

### Title of Proposal

**Safe and Effective Staffing:** Consultation on proposals to enshrine safe staffing in law, starting with the nursing and midwifery workload and workforce planning tools.

### Purpose and intended effect

#### Background

- Nursing and midwifery workload and workforce tools have been developed and mandated for use in NHS Boards since April 2013. A suite of 12 tools is now available covering 98% of service areas helping to plan for the number of nurses and midwives they require to provide the best possible care for patients. One multi-disciplinary tool has also been developed for use in Emergency Department/Emergency Medicine Settings.

#### Objective

- The objective of the Safe and Effective Staffing legislation will be to:
  - Ensure safe staffing levels, reflecting patient and service needs
  - Enshrining key principles of triangulation
  - Enable consideration of service delivery models
  - Enable public and staff assurance (and reassurance).

#### Rationale for Government intervention

- The link between safe and sustainable staffing levels and high quality care is well established. It is vital to have the right number of staff in place, with the right skills. Scotland has led in the UK in developing mandatory nursing and midwifery workload and workforce planning tools that help NHS Boards to plan for the number of staff they require to provide the best possible care for patients in a variety of specialities.
- It will contribute to two of the 16 national outcomes:
  - We live longer, healthier lives.
  - Our public services are high quality, continually improving, efficient and responsive to local people's needs.

### Consultation

The legislation will be developed in a collaborative way involving colleagues from across and outwith the Scottish Government.

#### Within Government

- We are working with colleagues across the Scottish Government to develop this legislation. This includes, but is not restricted to the following teams:
  - Workforce and Strategic Change.
  - Person Centred and Quality Unit.
  - Integration.
  - Health Performance Delivery.

- This will ensure that current Scottish Government policy is reflected in the ongoing development of this legislation and will ensure that all appropriate stakeholders and stakeholder groups can offer comment of these proposals.

### **Public Consultation**

- The formal consultation will run for a period of 12 weeks from 12<sup>th</sup> April 2017 until 5 July 2017.
- The consultation material will be available on the Scottish Government's website and will be sent to a wide range of stakeholders. We will also use social media to provide updates.

### **Business**

- We will identify relevant organisations to meet with during the consultation period and update this section at Final BRIA stage.

### **Options**

#### **Option 1 – Do Nothing**

Under Option 1, the situation would remain as it is at present. The tools are currently mandated for by NHS Boards and are more widely used but there is scope to ensure they are more consistently applied and reviewed within NHS Boards across Scotland.

#### **Option 2 – Introduce Safe and Effective Staffing Legislation**

This will create a statutory duty on organisations providing health and social care to apply the workforce tools, starting with the nursing and midwifery tools on a consistent basis.

The full consultation document covering the proposed legislative measures that will be developed is published in conjunction with this partial BRIA.

#### **Sectors and groups affected**

The legislation would apply to organisations providing health and social care and be applicable only in settings and in staff groups where a nationally agreed methodology and tools exist.

The legislation would apply to all providers of health and social care services.

#### **Benefits**

Option 1: there would be no action and therefore no additional benefits.

Option 2: the introduction of these requirements are intended to further ensure – and assure - safe and effective staffing and strengthen and enhance the arrangements already in place to support continuous improvements in workforce planning and employment practice across Scotland.

## **Costs**

Option 1: there would be no action and therefore no net additional costs to government or to providers of health and social care services.

Option 2: The legislation should not create sizeable additional costs or liabilities for government.

The Scottish Government and NHS Boards would need to consider if it was necessary to introduce any additional training on application of the use of the tools and consider the costs and resources which would be required.

## **Scottish Firms Impact Test**

The proposal is designed to reinforce a culture of safety and quality for patients in Scotland in all health and social care settings. There have been no consultations with Scottish firms who may be affected. The consultation which this document accompanies actively seeks the views of businesses who may be affected by these proposals and who the consultation document has been forwarded to.

## **Competition Assessment**

Will the proposal directly limit the number or range of suppliers?

The proposal will not directly affect the number or range of suppliers of health and/or social care. The legislation will apply to all health and social care settings.

Will the proposal indirectly limit the number or range of suppliers?

The proposal will not indirectly affect the number or range of suppliers of health and/or social care. The legislation will apply to all health and social care settings.

Will the proposal limit the ability of suppliers to compete?

The legislation will apply to all health and social care settings. It will have no impact on competition within the health and social care settings.

Will the proposal reduce suppliers' incentives to compete vigorously?

The legislation will apply to all health and social care settings.

Will the proposals limit the choices and information available to consumers?

The legislation will apply to all health and/or social care settings. It will have no impact on the choices and information available to consumers.

## **Test run of business forms**

No new forms for business are anticipated.

## **Legal Aid Impact Test**

As part of the legislative development process we will liaise with the Scottish Government Access to Justice Team to gauge whether any proposed legislation will affect Legal Aid. This will be detailed within the final BRIA.

**Enforcement, sanctions and monitoring**

The enforcement, sanctioning for non-compliance and monitoring of any proposed legislation will be detailed within the full BRIA.

**Implementation and delivery plan**

12 April 2017 – launch of consultation process.

**Post-implementation review**

A review process will be considered as the legislation is developed.

**Summary and recommendation**

Option 2 is the option on which the Scottish Government wishes to consult.

**Summary costs and benefits table**

This will be detailed in the full BRIA, following consultation and accompanying documents.

**Declaration and publication**

I have read the Business and Regulatory Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

**Signed:**

**Date:** 30 March 2017

**Minister's name** Shona Robison MSP

**Minister's title** Cabinet Secretary for Health and Sport

**Scottish Government Contact point:** Dawn Sungu, Chief Nursing Officer  
Directorate



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Any enquiries regarding this publication should be sent to us at  
The Scottish Government  
St Andrew's House  
Edinburgh  
EH1 3DG

ISBN: 978-1-78652-904-6 (web only)

Published by The Scottish Government, April 2017

Produced for The Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA  
PPDAS263818 (04/17)

W W W . G O V . S C O T