

RCN Scotland response to:

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

20 February 2018

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

**1a Do you think it is important to have a coherent legislative framework across health and social care to underpin workforce planning and appropriate staffing in health and social care?**

Not Answered

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

Please see answer to 1c.

**1c Please provide any other comments you may have.**

The RCN remains committed to working constructively with the Scottish Government and partners to influence delivery of meaningful legislation to ensure staffing for safe and effective care. We are clear that our registered nurse and health care support worker members are expecting a Bill that will have a tangible, positive impact on the current staffing situation and future nursing staffing. To that end the College has committed significant resource to the process to date, playing an active part in all formal groups influencing the Bill and meeting regularly with officials to discuss the implications of our original, detailed response to the Bill proposals and how to reflect these in legislation. Our original response to the first consultation stands, in full, and continues to be relevant in relation to the wider scope of the Bill. We do not propose to repeat the full detail of that submission here. This response and our original consultation submission should be considered together. Please see: <https://www.rcn.org.uk/about-us/policy-briefings/response-to-scotgov-safe-staffing>.

Discussions on the detail of the Bill are clearly moving at pace and, particularly given the critical discussions on the general duty and proposed principles at the Bill Group meetings which have taken place since this consultation was published, we are assuming that thinking has progressed significantly within the Bill team during the consultation period. Our comments here should also be read in light of the ongoing input the RCN has offered to the development of the Bill.

At this stage, we would also note that we have chosen not to respond directly to the scored questions as, in most cases, the wording of the questions require a more nuanced response. In addition, as there is often no direct space to comment on key elements of the proposed approach, we are taking a pragmatic approach to the opportunities for additional comment.

We have a number of key points to raise in relation to this section.

1. The RCN stated in our original response that we support the principle of extending the legislation over time to other sectors and professions. Our particular interest for extension is in relation to health and social care services integrated under the Public

Bodies Act and, given our remit, in which nursing services are provided. We also stated the need for full engagement and the support of resources should this route be taken through the Bill. We also noted: “However, we are also clear that, as major providers of front-line clinical care, constituting the largest proportion of the NHS workforce and with significant impact on the outcomes of services users, this legislation is required now for the nursing and midwifery workforce. The Bill cannot weaken the potential positive impact of this legislation by diluting provisions in order to remain theoretically inclusive for the future”.

2. As the RCN has made absolutely clear through discussions in the Bill Group, we do not support that the general duty in the Bill should focus on workforce planning. This is the wrong starting point for the general duty and the accompanying principles. We have been clear that this Bill requires a sophisticated legislative approach that increases leverage, in a proportionate manner, over and above current workforce planning specifically because current approaches have not adequately delivered appropriate staffing. The proposed general duties provide insufficient additionality. The Bill must have improved outcomes for patients and service users, by staffing for safe and effective care, at its core, not the production of a plan.
3. We note again that the provisions of the Bill must explicitly apply across three levels to be effective, requiring:
  - The inclusion of real time data provision and decision making in existing services to ensure quality and safety at the point of care.
  - The use of tools and methodologies to support service planning, particularly given the significant transformation agenda now in play from localities to regional and national services. Plans to resource future services must be based on robust workforce and workload methodologies.
  - Duties on the Scottish Government (and in future, other education commissioners) to use robust methodologies from organisations to project future workforce need and commission pre-registration places, as well as post-registration education and training. The RCN is clear that neither organisations nor nursing leaders can guarantee safe staffing for the future if the national supply of nurses and midwives working at all levels is not forecast and resourced robustly.
4. As we have noted throughout our discussions with the Scottish Government, we are clear that applying the general duty and principles to providers only is wholly insufficient in a landscape in which commissioning organisations have a direct influence on the design and resourcing of nursing services across sectors.
5. Existing mechanisms to provide monitoring and scrutiny of the Bill’s provisions are not sufficient. Again, we refer to our point about the need for additionality, rather than putting the status quo into legislation. We also note that the provisions around annual reviews etc. do not take into account significant decisions made by IJBs. In our original consultation we provided one proposal for ensuring public scrutiny of organisations’ provision of staffing for safe and effective care, learning lessons from Audit Scotland’s Section 22 reports to the Scottish Parliament. There is more to be explored here as the Bill is drafted to provide appropriate improvement, as well as assurance for the public and staff.

## **Overarching principles applicable to health and social care service providers**

**2a What is your view of the proposal that there should be guiding principles for workforce planning to provide NHS Boards and care service providers with a foundation on which to base their staffing considerations?**

Not Answered

**2b Do you have a view on whether/how application of these principles should be monitored?**

We have been unable to answer questions 2a and 2c, because as noted previously the RCN does not believe that the Bill should be designed around principles for workforce planning. The RCN has, from the start, called for principles to be written into the heart of this Bill, but has been clear that these should be rights-based and focused on outcomes for people. Both the Public Bodies Act and the new health and social care standards provide helpful source material here.

**2c Please rate the following examples of potential principles (note that the following do not represent draft wording for the principles to be included in legislation).**

- i. Workforce planning must ensure an appropriate number and mix of staff to provide high quality services.:**
- ii. Workforce planning must ensure an appropriate number and mix of staff to provide effective and efficient use of resources.:**
- iii. Workforce planning must ensure an appropriate number and mix of staff to provide services that meet service user needs.:**
- iv. Workforce planning must ensure an appropriate number and mix of staff to provide services that respect the dignity and rights of service users.**

**2d Are there other principles you think should be included?**

Given the RCN does not agree with the starting point of principles for workforce planning setting the context for delivering a general duty we have not provided ratings for the potential principles listed. That said, with a refocus, there is some helpful wording here in relation to patient / service users.

We do note that there is no reference to safety in the principles despite the consultation using “safe” in the title. Neither is there a mention of safety in the recent papers to the Bill Group on the principles. To be clear: The RCN does expect a principle on safety to be included. There is a principle on this within the Public Bodies Act.

There is no principle included on the importance of professional judgement informing staffing decisions. And we note that there is no principle related to the support / development / wellbeing of staff given the impact of this on staffing for safe and effective care. Both are vital to include.

We agree that there is a need to ensure that commissioners and providers of services can demonstrate publicly how they have used these principles as a “test” in the staffing and design of services. We are keen to see how assessment against these principles can be brought into formal scrutiny and inspection of relevant services.

## **Requirements applicable to Health Boards**

**3a What is your view on the proposed requirements for Health Boards?**

Not Answered

### **3b Are there any other requirements you think should be included?**

We have not been able to answer question 3a because the single side of detail provided in the discussion document is not sufficient to give a clear view. We note that the areas for inclusion in the NHS provisions provided to the Bill Group have gone further than those set out in this discussion document (for example, those papers suggest inclusion of provisions around accountability and risk management which are not explored in any detail here).

Our response to the initial consultation set out a significant number of specific provisions which would relate to nursing staffing for safe and effective care which we would expect to see reflected in the draft Bill, but which are not mentioned at all here. The role of the Senior Charge Nurse / Team Leader in effective implementation of staffing for safe and effective care would be a case in point.

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

As a general point, we understand that development of the NHS-related provisions to the Bill are far further advanced than those for the social care sector and yet we have still to see the detail of proposed wording. It is difficult for the RCN to provide further comment on behalf of our members until the scope and exact wording of these provisions are made clear. We would welcome confirmation of when we can expect to see the detail of the drafting.

### **Development of validated tools and methodologies for the social care sector**

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

Not Answered

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

#### **4b Do you think that social work should be included within the scope of this legislation (while there is currently no proposal to include social work, this could be considered for inclusion at a later stage).**

Not Answered

#### **4c Please provide any other comments on the inclusion of social work within the scope of the legislation.**

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

**5a In delivering the function described under 3, the Care Inspectorate could be required:**

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

**5b Are there any other routes you think should be considered to ensure appropriate engagement with the sector?**

We note that the outline of provisions provided offers no opportunity for professional bodies or trade union representatives to have a role in suggesting the need for new tools, developing and validating new methodologies or reviewing methodologies over time. This is a serious omission, which we would expect to see addressed in drafting.

There is far more detail which we would wish to see about the process for setting out and mandating the tools before providing further comment on the proposed approach.

We are not clear how the rather open approach described will support the development of a financial memorandum that will support the level of investment required to develop and implement robust new methodologies.

**5c Please identify any settings where you think the development of appropriate workload and workforce planning tool or methodology is most important; and any care settings where you think this is not relevant or required.**

There is an urgent need to develop robust methodologies for staffing for safe and effective care, and in particular clinical care delivered by nursing staff, within the care home sector and the RCN would wish to see an explicit commitment to this, along with a timetable for delivery, accompany the Bill and be included in the financial memorandum.

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

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

- i. Dedicated central expertise for the identification of specified settings where the development of workload and workforce planning tools and methodologies would be practicable and beneficial.**
- ii. Additional resource for the Care Inspectorate to enable the proposed functions.**
- iii. Training for key personnel in the sector in the development of workforce planning approaches.**
- iv. Dedicated resource for service providers who engage in the development and validation of approaches, tools and methodologies.**
- v. Training for key personnel in specified services once validated tools and methodologies are confirmed through regulations.**
- vi. Other: Please specify below:**

We note that this level of detail is not also included within the outline of the NHS provisions where we expect new methodologies to be developed over time.

**Risks and unintended consequences**

**7a What risks or unintended consequences might arise as a result of the proposed legislation and potential requirements?**

The RCN addressed the issue of consequences in our original, detailed response and our suggestions and commentary remain relevant to discussion of the risks and unintended consequences. We note that the approach to extending the scope of this Bill has caused significant concern in parts of the social care sector. While opportunities for wider engagement with social care stakeholders are progressing, we are concerned that the healthcare – and in particular the nursing and midwifery - provisions in the Bill, have become overshadowed and too little space is available to debate significant and complex parts of the proposed Bill with clinical stakeholders. The healthcare provisions, in particular nursing and midwifery, will be far more extensive than those currently proposed for social care functions.

Again, we urge that the detail of the proposals for health is made clear at the earliest opportunity.

**7b What steps could be taken to deal with these consequences?**

**What steps could be taken to deal with these consequences? :**

please see 7a.