

RCN Briefing:

Implementation of the Health and Care (Staffing) (Scotland) Act

Following Scotland's Safe Staffing Act coming into force on 1 April, this briefing sets out why this groundbreaking legislation is needed more badly than ever, and the key differences it will make for our members and those they're caring for.

From the outset, RCN Scotland has strived to positively influence the development and implementation of the Act for the benefit of our members and for everyone in Scotland who relies on the safe provision of high-quality health and care services.

Introduction

Almost five years since the Act was passed, we continue to see persistently high nursing vacancy rates, increased reliance on supplementary staffing and alarming numbers of nurses leaving the profession.

Our members have told us that unacceptable and unsafe working conditions are being normalised, nursing staff are burnt out, and the impact of not being able to provide the level of care they want is taking a serious toll.

The implementation of this long-awaited legislation, along with other vital initiatives such as the Ministerial Nursing and Midwifery Taskforce, offers hope for the future.

Key provisions in the Act

The Act is the first in the UK to place a new legal duty on the NHS and care providers to make sure there are always suitably qualified staff working in the right numbers for safe and effective care.

The Act does not place any duties on frontline members of health and care staff. Rather it gives nursing staff additional rights and expectations; we've been raising awareness of this amongst our members and believe it's also useful for elected representatives to be aware of these provisions.

The Act requires NHS boards to:

- seek clinical advice when making staffing decisions, record their decisions and explain where any decisions conflict with clinical advice.
- improve reporting and escalation processes for concerns. This means that if staff raise a concern about unsafe staffing levels, they can expect to be listened to, for their concerns to be acted on, and to receive feedback to tell them what has been done to improve staffing levels in response to these concerns.

- ensure clinical leaders have the time they need to perform their leadership role.
- ensure staff have the time and resources for training.

In social care:

- In addition to the requirement to ensure there are always suitably qualified staff working in the right numbers, providers will have a legal duty to provide appropriate training for their staff, including suitable assistance to gain relevant qualifications.
- The Care Inspectorate has the power to develop and maintain a staffing methodology for determining safe staffing in care homes.

The Act also imposes a new duty on the Scottish government to ensure there are sufficient numbers of registered nurses, midwives and medical professionals available to enable health boards to comply with their duty to ensure safe staffing levels. We believe this is an important provision, which will put pressure on the Scottish government to improve workforce planning.

Scrutiny of health and care staffing

The Act contains some robust reporting requirements. For example, all health boards will need to report annually on how they are meeting their safe staffing duties and the challenges and risks they have faced in relation to this.

These reports must be published and submitted to Ministers. In turn, Ministers must provide a report to parliament, including on how this information is being used to inform the government's national policies for staffing health and care services.

This is an important opportunity to ensure ongoing scrutiny of how the duties introduced by the Act are being met in practice and we are calling for an annual parliamentary debate on safe staffing, underpinned by the submitted data and evidence.

Workforce planning tools

The Act requires NHS boards to use the Common Staffing Method in all clinical areas where there are workforce and workload planning tools set out in legislation. This means the approved tools are used alongside other considerations - such as vacancies, skill mix, patient need, clinical advice and staff feedback - to set the nursing establishment i.e. how many staff are required in a particular clinical setting to provide safe and effective care.

Healthcare Improvement Scotland (HIS) is required to maintain these workforce tools and develop new ones, in consultation with trade unions and professional bodies.

However, we believe that some of the calculators that sit within key staffing level tools for nursing are flawed which fundamentally undermines the effectiveness of the tools in allowing services to plan the number, and skill mix, of staff needed to provide safe and effective care.

We believe the tools are understating the number of nursing staff required for safe patient care, and establishments are being set lower than what is needed to fill staffing rosters safely. Those responsible for staffing in a clinical area are then finding gaps in their staffing because the establishment for that area isn't high enough. This is driving increased bank and agency spending as clinical leaders try to fill their rosters, and in many cases, is also leading to unsafe staffing levels.

Since these issues came to light in early September 2023, there have been several meetings between RCN Scotland, HIS and the Scottish government to discuss our concerns. While there has been progress - with HIS and Scottish government accepting that there are flaws and committing to a review - these issues must be addressed urgently given that they are contributing to an unsafe environment for patients and nursing staff. We are, therefore, calling for Scottish government and HIS to set out a clear timeline on how these issues are going to be addressed.

These tools are the foundation of this legislation and must be updated, and validated, to ensure the outputs meet the requirements of safe care.

More details about this issue are available in this [letter to the HSCS Committee](#).

Next steps

We know that the new legislation will not immediately address the current acute staff shortages, and we are clear that it will only make a long-term positive difference if services have the nursing establishment they need. It must be accompanied by increased investment in services to enable providers to tackle vacancies and recruit and retain the workforce that Scotland needs.

However, the Act does create new duties that should make an important difference to nursing staff and to patients.

Given the key role of RCN members in reaching this stage, we are celebrating the implementation of this important legislation. 1 April marks an important milestone in our journey – we now move on to the next chapter in our fight for staffing for safe and effective care.

How MSPs can support our safe staffing work

- Ask Scottish government what action it is taking to address the flaws we've identified within key staffing level tools for nursing to ensure these tools allow services to plan the number, and skill mix, of staff needed to provide safe and effective care.
- Support our calls for an annual parliamentary debate on safe staffing, to ensure ongoing scrutiny of how the duties introduced by the Act are being met.
- Support our calls for the Ministerial Nursing and Midwifery Taskforce to produce a detailed, ambitious set of recommendations and actions, backed by the necessary funding to make an impact.
- Support our [priorities for action](#) for the Ministerial Nursing and Midwifery Taskforce, which sets out the action we believe is needed across the themes of wellbeing; culture and leadership; attraction; education and development.
- At a local level, scrutinise any cuts to nursing posts or recruitment freezes proposed by boards as part of efforts to make financial savings. We strongly believe that staffing decisions must be based on need, and not on financial grounds.

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