Royal College of Nursing Scotland

## RCN Scotland response to the Scottish Government's stakeholder consultation on:

# Changes to the Common Staffing Method provisions in the National Health Service (Scotland) Act 1978

27 October 2026

## Introduction

The Royal College of Nursing (RCN) is the world's largest nursing union and professional body. It is the leading national and international authority in representing the nursing profession. We represent over half a million nurses, student nurses, midwives, nursing associates and nursing support workers in the UK and internationally.

The RCN has over 48,500 members in Scotland. We campaign on issues of concern to nursing staff and patients, influence health policy development and implementation, and promote excellence in nursing practice.

## Background

This response was made in the form of a letter in reply to a letter from Scottish Government to RCN of 28 September 2026 entitled "Health Workforce - proposed changes to the Common Staffing Method provisions in the National Health Service (Scotland) Act 1978 (as amended by the Health and Care (Staffing) (Scotland) Act 2019 – Letter"

## The Scottish Government's proposal

Insofar as the proposal is encapsulated in these three paragraphs of your letter, RCN is in agreement with it.

- "The purpose of the proposed changes is to move away from the procedure of using SSIs to give effect to changes to staffing level tools. Instead, Scottish Ministers would be empowered to specify the relevant tools in writing from time to time. The tools would remain an integral part of the Common Staffing Method and would continue to operate within a statutory framework, with Boards compelled to use them.

- Under this proposal, HIS would continue to periodically review and update the tools to ensure they continue to reflect evidence, clinical practice and service developments. There is no change to the existing requirements for HIS when developing new, or revising existing tools, to ensure there is appropriate stakeholder engagement, across the relevant sectors, which will in turn ensure tools are contemporary and work across diverse practice settings and staff groups. Changes to the prescribed tools would continue to be underpinned by recommendations from HIS, following which Scottish Ministers would specify the relevant tools in writing.

- This approach would retain national consistency and ministerial oversight while providing greater flexibility to update staffing level tools in response to emerging evidence, service developments and changes in clinical practice. Future updates would no longer require a new SSI each time a tool is amended, reducing administrative burden and enabling improvements to be implemented more quickly and efficiently."

We would like to point out that RCN flagged the problems that the present proposal is designed to solve at the time that the original set of existing regulations were laid before the Scottish Parliament, in 2024. Our engagement on this matter is clear from correspondence with the then Health, Social Care and Sport Committee, which raised other related issues as well.

Our position on secondary legislation at that time focused on the very specific issue of new regulations being required every single time a new *numbered* version of any given tool came into existence because the numbering in the regulations would have to be changed. We did not at that time question that the tools should appear in secondary legislation in the current manner. However, since the Scottish Government's present proposal creates a level of flexibility with which we agree, the fact that it goes beyond what we originally asked for, and removes the requirement for secondary legislation entirely, is to be welcomed.

The detail of our previous position is set out in the appendix to this letter for reference.

## Other Matters

Whilst we appreciate this response to your letter is not the place to discuss the following matters in great detail, we nevertheless consider that it is helpful to highlight them as they are related matters and ones that we will wish to discuss with Scottish Government and with other key organisations in due course.

### Nursing Ratios

The Royal College of Nursing is concerned that despite the use of the common staffing method, which is underpinned by staffing level tools and professional judgement, there is inappropriate variation in nurse staffing levels across NHS Boards. Our members consistently highlight short staffing as a major concern that impacts on their ability to provide safe, effective, high-quality patient care and results in them missing breaks, working over their contracted hours and ultimately impacting on their physical and mental wellbeing. The RCN is therefore calling for the introduction of mandatory minimum registered nurse-to-patient ratios for all health and care
settings across the UK, a proposal that is supported by international evidence.[i]

The introduction of nursing ratios would likely require changes to elements of the 1978 Act (as amended by the 2019 Act).

### The utility of the current staffing level tools

RCN has been extensively involved in the work led by Healthcare Improvement Scotland (HIS) to amend and improve the current staffing level tools. Some of that work is highlighted in HIS's recently published annual report on matters to do with the Act.[ii]

The RCN has been robust in reviewing the current staffing level tools and professional judgement tool, highlighting, to HIS, a number of issues relating to the calculations that sit behind the tools. Examples are:

- The earlier version of the professional judgement tool was significantly underestimating the required whole time equivalent (WTE) staffing requirement due to excluding time required for shift handovers and staff breaks. Following RCN Scotland providing evidence to HIS, the calculation was eventually changed. However, there was a considerable time delay to the changes being implemented, which impacted on the ability to make correct workforce planning assumptions

- Staffing level tools remove the time nursing staff take for paid and unpaid breaks along with other personal time taken during their shift. RCN has disputed this approach and HIS recently conceded that the time removed would be reduced to only reflect unpaid breaks. Again, the significant delay in making this change has affected the ability to make correct workforce planning assumptions.

Whilst we have been involved in the process of agreeing to the changes in the latest versions, we have done that so as not to further delay these improvements to the tools being made. Our agreement to the changes should not be taken to imply that we consider the revised version of the tools to be as robust as they should be.

We will continue to pursue our concerns, including via our ongoing engagement with HIS, and participation in the current process to implement the recommendations of the Scottish Ministerial Nursing and Midwifery Taskforce.

### Data from the current operation of the common staffing method

In the RCN report "Evaluation of the impact of the Health and Care (Staffing) (Scotland) Act 2019 on nursing staff in 2024-25"[iii] we proposed that:

> **"**Healthcare improvement Scotland should establish the extent to which it is currently possible to collate and aggregate all the data produced by Health Boards from every
> instance in which they "run" the Common Staffing Method (whether for those types of health care that currently have associated staffing level tools or not) with a view to being able to see at the national level the extent to which the number and nature of nursing staff required matched the number of nature of nursing staff provided within any chosen time period, and, if this is judged not to be currently possible, to draw up a plan to make it possible, to include what this would require in terms of information technology and finance."

The HIS report noted above refers to another HIS report: its annual review of the common staffing method.[iv] HIS writes "the (annual) review's recommendations align with the findings of the Royal College of Nursing's recent evaluation of the Act, which similarly identified the need for improved common staffing method data reporting, stronger staff engagement and feedback mechanisms, as well as greater consistency in the application and assurance of staffing methodologies across NHS Scotland."

We take the phrase "improved common staffing method data reporting" to refer to our proposal as reproduced above, and we welcome HIS's position on this matter.

## Appendix: Existing RCN positions on the issue at hand

RCN initially wrote to the Committee twice in 2024.

- 23 February 2024 Letter from RCN Scotland regarding the NHS Common Staffing Method Scotland Regulations 2024 | Scottish Parliament Website
- 4 March 2024 Further correspondence from Royal College of Nursing Scotland regarding the NHS (Common Staffing Method) (Scotland) Regulations 2024 | Scottish Parliament Website

The Committee then wrote to the Scottish Government about our concerns.

- 6 March 2024 National Health Service Common Staffing Method Scotland Regulations 2024 | Scottish Parliament Website

The Scottish Government replied.

- 8 March 2024 SG response to RCN concerns regarding NHS Common Staffing Method Scotland Regs 2024 | Scottish Parliament Website

We wrote to the Committee again.

- 18 March 2024 NHS (Common Staffing Method) (Scotland) Regulations 2024 | Scottish Parliament Website

The Committee characterised RCN's position as follows (a characterisation with which we are comfortable):

> "1) That the Scottish Government "is taking an impractical approach to the reading of the Act". RCN argue that, in interpreting the Act as requiring versions of tools to be stipulated in regulations, the Scottish Government is failing to make a suitable distinction between wholesale "replacement" of tools and small, administrative "revisions" that are likely to take place much more frequently;
> 2) That naming of the current tool without reference to a version number should not lead to confusion for those using the tools "As long as the staffing tools are appropriately located and access to them appropriately administered (as is currently the case)";
> 3) That "if regulations stipulate existing tools (some of which it has been acknowledged are flawed and some of which are currently under live review), the services and staff using these tools will be stuck with these for an unspecified amount of time, simply for the sake of naming versions in the regulations, which is not helpful or in the spirit of the legislation"."

And the Committee also wrote

"In conclusion, we would ask the Scottish Government to respond directly to the RCN's principal assertion that "We continue to believe it would be preferable for the regulations to refer to the tools by name and not by version. This would

negate the need to update the regulations each time the tools require minor updates.""

Although the Scottish Government chose not to take up our suggestions and although that was a decision with which we did not agree, we nevertheless eventually took the position that:

- "Due to the importance of implementing the provisions within the 2019 Act on 1 April, we agree that the regulations should be passed."

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[i] https://www.rcn.org.uk/employment-and-pay/Safe-staffing/Safety-critical-nurse-to-patient-ratios and see also our manifesto for the 2026 Scottish Parliament election https://www.rcn.org.uk/scotland/Get-involved/Campaigns/Scottish-parliamentary-elections-2026

[ii] https://www.healthcareimprovementscotland.scot/publications/health-and-care-staffing-scotland-act-2019-healthcare-improvement-scotland-functions-in-relation-to-staffing-annual-report-2025-2026-september-2026

[iii] https://www.rcn.org.uk/About-us/Our-Influencing-work/Policy-briefings/sco-pol-evaluationhcssact-020726

[iv] https://www.healthcareimprovementscotland.scot/publications/healthcare-staffing-programme-common-staffing-method-annual-review-march-2026/