

Royal College of Nursing Scotland evidence to Health and Sport Committee: Scottish Statutory Instrument The Healthcare Improvement Scotland (Delegation of Functions) Order 2016

The Royal College of Nursing (RCN) Scotland welcomes the opportunity to comment on the proposal to give Healthcare Improvement Scotland (HIS) the power to direct health boards to close wards to new admissions. The RCN Scotland is a professional body and trade union for nurses and health care support workers with around 40,000 members in Scotland.

The committee's short timescale for seeking evidence on this issue, and the lack of detail available on how this power will be enacted, means it is difficult for us to provide a clear position. We have therefore set out some of the issues arising from the proposal to increase HIS's powers that we have been unable to address on information available. We hope that this supports the committee's scrutiny of the statutory instrument.

RCN Scotland has been involved in other work that arose from the recommendations of the Vale of Leven Hospital Inquiry Report, including work on a nursing care assurance framework, and our comments and questions build on this.

Extending Healthcare Improvement Scotland's powers

Currently there are two parallel tracks of healthcare regulation. On one side, the Care Inspectorate licenses and regulates care services; and HIS regulates independent hospitals, voluntary hospices and private psychiatric hospitals. On the other, HIS scrutinises and inspects NHS services. However it does not have a regulatory function within the NHS.

Giving HIS the power to direct health boards to close wards would increase the regulatory power of HIS to respond to quality concerns. This was welcomed in the recent OECD report on health care quality in the UK as a way of strengthening HIS's powers¹. Is the intention that the increase in HIS's powers to close wards is a first step towards an independent regulatory framework for the NHS?

¹ OECD (2016), *OECD Reviews of Health Care Quality: United Kingdom 2016: Raising Standards*, OECD Publishing, Paris. DOI: <http://dx.doi.org/10.1787/9789264239487-en>

HIS is part of NHSScotland, as a special health board, and has both a scrutiny and improvement function. This raises questions about how independent HIS can be. The RCN has repeatedly said in the past that HIS's dual improvement and scrutiny role can present a conflict of interest. If HIS is granted the power to close wards, will this increase the conflict of interest further and, if it does, how will this be mitigated?

This conflict of interest was also stressed by the OECD, which accused HIS of "*marking its own homework*"¹. The OECD recommended that Scotland should consider formally separating out the scrutiny arms of HIS into a distinct and independent entity.

Given the current proposals, how will HIS be protected from situations where there may be political resistance or pressure to close wards?

Scope of the new power

The statutory instrument is being made in response to the recommendation of the Vale of Leven Hospital Inquiry Report that the Healthcare Environment Inspectorate (HEI), which is part of HIS, has the power to close wards to new admissions if the HEI concludes that there is a real risk to the safety of patients.

However it is clear from the drafting of the statutory instrument, and from the accompanying policy note, that the scope of the power is wider than the original recommendation from the Vale of Leven Hospital Inquiry Report. For example it will allow HIS to direct a health board to close a ward because of concerns around staffing levels, not just issues of infection control.

On one hand this will help give HIS the teeth to act where there are important systemic issues that have not been addressed by the health board such as an inadequate number or skill mix of staff on a ward.

However we would want to be reassured that the consequences and potential impact of this had been fully considered. What will be the impact of HIS closing a ward to admissions be on other parts of the service and how will any risks be mitigated? We would be interested to know if the committee is looking at any evidence on the impact of extending HIS's powers in this way. For example, how many times would HIS have wanted to use this power to close a ward in the past and in what circumstances would they have used it?

Process

It is not possible to look at the statutory instrument in isolation. There has been no detail given on how this power will be carried out. There needs to be full consultation on the process that HIS will use to enact the power to close a ward. Any process needs to be clear, consistent and transparent.

HIS using its power to direct a health board to close a ward should only ever be an ultimate sanction. Therefore what are the escalatory steps that would need to be carried out before this is used as a last resort? What will the appeals process be?

The statutory instrument states that the power will only be enacted when HIS believes that “*there is a serious risk to the life, health or wellbeing of persons*”. How is this serious risk to be defined? Again, this criteria will need to be clear, transparent and consistently applied.

HIS is in the process of developing its new comprehensive approach to reviewing the quality of care, which the RCN responded to in September 2015². How will this new power fit in to and complement HIS’s new approach to scrutiny?

The original recommendation from the Vale of Leven Hospital Inquiry Report required an urgent action plan to be devised in the event of a ward closure. If HIS is to close a ward, what other actions must happen and by whom, for example developing an action plan and mitigating any risks, to continue to deliver safe care?

Governance

For HIS to have to resort to closing a ward means that there must have been a serious failing in governance within the health board (or integration authority), for the health board not to have already closed the ward to new admissions itself. How will this failure in governance be addressed and all board members (or members of the integration authority, if appropriate) be held to account?

Closing a ward may be necessary because of a systemic failing in a service. It also may be the result of a health board trying to meet a Scottish Government-set HEAT standard that applies to one part of the service and has unintended consequences on another part of the service. For example, if resources are focused on service areas where HEAT standards apply, this may impact the resources available for other service areas. The RCN would not want to see a situation where individual staff members working on wards are penalised because of a systemic failing or from the unintended consequences of a health board’s effort to meet a HEAT standard.

Timing of changes

The way health and social care is planned and delivered is changing rapidly. This includes how care is scrutinised. HIS’s quality of care review, the review of the National Care Standards and changes to scrutiny resulting from the integration of health and social care are all currently taking place.

Therefore is now the right time to also make changes to HIS’s powers? Would it be better to wait for HIS’s new model of scrutiny and the new National Care Standards

² <https://www.rcn.org.uk/about-us/policy-briefings/sco-pol-building-a-comprehensive-approach-to-reviewing-the-quality-of-care>

to be embedded, for inspection teams to have developed consistency and for staff to have become familiar with the new approach, before bringing in additional changes?

Importance of improvement

The proposed new power for HIS to close wards is just one tool in the effort to improve the quality of care. There needs to be a wider discussion that looks at the role of improvement support, as well as scrutiny.

We know what really makes the difference to quality and safety is frontline staff having time to care, having the right numbers of staff with the right skills and having access to continuous professional development. Staff need the ability, motivation and opportunity to drive quality improvement. Organisations must have the space and resources they need to set their own goals, motivate staff and skill them up to deliver better care for patients³. What will be the impact of tightened health board budgets on staff's ability to do this? We want to empower staff, not disempower them, and strengthen the quality improvement capacity and capability within health boards themselves.

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³ Dr Jennifer Dixon, Chief Executive of the Health Foundation, 26 March 2014