

STAGE 3 PROCEEDINGS: HEALTH AND CARE (STAFFING) (SCOTLAND) BILL

The RCN supports the principles of the Health and Care (Staffing) (Scotland) Bill. We are proud to represent the views of our members across Scotland's NHS and care home sector.

Nurses and health care support workers across Scotland are working tirelessly to provide the very best care that they can for patients and residents.

The reality is, however, that because of staff shortages, issues with the skill mix of teams and ever increasing demands on services, there are times when the staff working are not able to meet the care needs of their patients.

The Bill before the Parliament presents an opportunity to get the right number of staff, with the right skills in the right place so that patients and residents receive safe and effective care.

Ahead of the publication of the Bill, the RCN set out six key tests which the legislation should meet if it is to have a positive impact on patients, residents and staff in practice. The Bill was significantly amended at Stage 2 bringing it more in line with the RCN's position.

The RCN welcomes many of the amendments lodged ahead of Stage 3, which it feels would further improve and strengthen the Bill. We have welcomed the steps taken to ensure the Bill takes a multidisciplinary approach and have worked with colleagues from other disciplines to support this.

The RCN believes that where nursing care is required, care home residents deserve to have it provided by the right numbers of nursing staff with the appropriate skills, competencies and education ([read our briefing on nursing in care homes](#)) and we welcome the strengthening of Part 3 of the Bill.

Following Stage 3 we hope that the Bill will address the majority of the RCN's tests and provides a solid framework to support staffing for safe and effective care within Scotland's NHS and care homes for adults.

The RCN's six tests are set out on the following pages with the relevant groupings of amendments for Stage 3.

Positive outcomes: Positive outcomes for people and staff must be at the heart of decision making.

Group 1 - Guiding principles of health and care staffing

Group 4 – Duty on Health Boards and care services to ensure appropriate staffing: staff wellbeing

RCN welcomed the positive discussion and amendments passed at Stage 2 to strengthen the guiding principles. We understand that legal advice received by the Scottish Government has indicated that including the safety of staff at this point is beyond the competence of the Scottish Parliament. We would welcome assurances from the Cabinet Secretary that the safety of staff remains a policy priority for the Scottish Government in implementing this legislation.

A strong professional voice: Nursing leaders, whether at a ward, team or governance level, should be able to exercise their professional judgement about whether there are the right number of nursing staff with the right knowledge, skills and experience, in the right place and at the right time.

Group 7: Clinical role and advice in Health Board governance

The RCN supports **amendment 63** in the name of Miles Briggs MSP which recognises the need for clinical advice and professional judgement to be central to all staffing decisions whilst maintaining accountability at Board level – ensuring a strong professional voice. It requires any decisions taken that are contrary to this clinical advice and judgement to be recorded, risks mitigated and compliance with the duties outlined in the legislation to be reported. We would expect a detailed definition of appropriate clinical advice to be included in guidance.

The RCN has championed the unique role of Senior Charge Nurses (SCNs), and their equivalents in the community, in delivering the aspirations of the Bill and the impact recognising their contribution and protecting their role could have on patient safety and improved outcomes. Our members set out a compelling case for SCNs to be non-caseload holding as prescribed in section 12IAD ([read our briefing for more on the role of SCNs](#)).

Amendment 18 in the name of the Cabinet Secretary for Health and Sport sets out an alternative to section 12IAD establishing a requirement for clinical leaders to have the time to fulfil their role. If **amendment 18** is to gain sufficient political support to be passed, it is essential that amendments **18A and 18B**, in the name of Alison Johnstone MSP, are also passed in order to give clinical leaders the time and resources to lead and develop their teams and ensure the clinical needs of all the patients in their team's care are being met. We would ask MSPs to support **18A and 18B** and to seek assurance from the Cabinet Secretary that the non-caseload holding status of SCNs is recognised in guidance.

Group 13: Staffing methods for care services

Amendment 80 in the name of Miles Briggs MSP would see that the recommendations of senior health care professionals with appropriate experience may be taken account of in the development of a staffing method. The RCN welcomes the acknowledgement of the role that senior nurses should play in advising on nursing staffing and the development of a staffing method for care services, where that relates to nursing. However, we do not feel this amendment is strong enough to provide the absolute clarity we seek and would expect further commitments to be set out in guidance.

Informed decision making: All decisions about staffing for nursing teams must be based on data and evidence, which is robust, up to date, and used appropriately.

Group 6: Staffing assessment and risk escalation by Health Boards

Whilst we would have preferred that this legislation more clearly align the identification and escalation of clinical risk with clinicians alone, the RCN supports **amendments 48 – 62** in the names of David Stewart MSP and Miles Briggs MSP because they strengthen the real time monitoring and risk escalation processes included in the Bill at Stage 2. In particular, the RCN welcomes **amendment 50** which recognises the need for clinical advice on risk mitigation.

Group 10: Duty to follow common staffing method

The RCN welcomes **amendment 65** in the name of Miles Briggs MSP which incorporates a national care assurance framework in the common staffing method. The RCN does not see the benefits of **amendment 66** over and above the existing wording of line 27 in section 4. We have always assumed that assessing the context in which an establishment is set for any part of the workforce would take account of the wider staffing implications. The RCN will seek to ensure through guidance that, if passed, this amendment does not have the unintended consequence of decisions on 24/7 nursing care being taken on the grounds of wider staffing implications rather than the safe care of patients.

Group 11: Role of Healthcare Improvement Scotland

Amendment 70 in the name of Miles Briggs MSP positively strengthens the requirement on NHS HIS to consider guidance published by professional bodies and the relevant clinical evidence and research in the monitoring and development of staffing tools.

Responsibility, accountability, real-time action and long-term planning:

Organisations must take responsibility for providing the right number of nursing staff. Staff should have the right knowledge, skills and experience and be deployed in the right place and at the right time to provide safe, high quality care to patients.

Group 6: Staffing assessment and risk escalation by Health Boards

RCN welcomes **amendments 48 – 62** in the names of David Stewart MSP and Miles Briggs MSP which strengthen the real time monitoring and risk escalation processes included in the Bill at Stage 2.

In particular, we support **amendment 60** and **amendment 62** in the name of David Stewart MSP which enable the review of decisions on a risk and sets out the requirements for health boards to address severe and recurrent risks. We would expect to see further clarification in guidance around the definitions of risks that are considered to be either or both severe or liable to materialise frequently and a requirement for boards to collate information on risks which actually materialise frequently.

Similarly the RCN is supportive of **amendments 52 and 61** in the name of Miles Briggs MSP, which recognise the need for boards to ensure clinical leaders receive training, the time and resources to carry out the risk escalation process.

Group 13: Staffing methods for care services

The RCN supports the development of staffing methods for care services and would like to see the Cabinet Secretary for Health and Sport commit to a timetable for the development of these.

Amendment 79 in this group, in the name of David Stewart MSP, seeks to place a duty on care providers to have a risk management procedures in place. This is important for parity across Part 2 and Part 3 of the Bill.

Staff to care for people across Scotland: This legislation is a starting point. Work must continue to ensure that Scotland has the health and care staff it needs across nursing and other disciplines. The Scottish Government must take responsibility for ensuring a supply of nursing staff that meets demand.

Group 2: Commissioning of care services

RCN supports **amendments 43 and 44** in the name of David Stewart MSP which set out duties on commissioners to consider the resources available to providers for them to be able to meet the duties placed upon them under the legislation.

Group 8: number and training of healthcare professionals

At Stage 2 the RCN was supportive of the inclusion of the duty to ensure that, where Ministers have commissioning powers, enough student places are being offered to train a workforce to allow health care and care providers to staff appropriately. **Amendments 15 and 17** in the name of Alison Johnstone MSP provide further clarity on this duty for the NHS.

Similarly at Stage 2 the RCN was supportive of the duty placed on boards to ensure that employees received time to carry out CPD.

Amendment 19 in the name of Alison Johnstone MSP confirms this requirement and ensures that staff are given the time and resources required.

Group 12: Care services: employment rights of staff

Amendments 71 to 78 in the name of Monica Lennon MSP set out a series of requirements relating to the employment rights of staff working in care services. The RCN supports the principle of ensuring the rights of care staff to fair pay and conditions behind these amendments. The RCN recognises the benefit this would have in supporting the sustainability of the sector and making a career in care more attractive.

Scrutiny and sanction: There must be public scrutiny of staffing for safe and effective care and sanction if the law is not met.

Group 3: Reporting on staffing by care services

Amendment 39 in the name of the Cabinet Secretary for Health and Sport sets out an annual reporting process on staffing in care services. This is a positive step in ensuring that clear information is collected which accurately reflects any challenges being faced by those placed under duties by this legislation.

RCN supports **amendment 39B** in the name of Alison Johnstone which seeks to ensure that Scottish Ministers take account of the reporting established by **amendment 39** on staffing in care services in determining the future supply of registered nurses and other health and care professionals as Scottish Ministers consider relevant. This also addresses RCN's sixth test – staff to care for people across Scotland.

RCN supports **amendment 39C** in the name of Monica Lennon which would put a duty on Ministers to ensure that care services have the funding they need to be able to meet their duties under this legislation.

Further information

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