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19 January 2024

Dear Clare,

Thank you for your letter dated 7 November 2023 regarding the Health and Care (Staffing) (Scotland) Act 2019.

I appreciate the committee's continued interest in the commencement of this important legislation and the implementation work which is being undertaken by the Scottish Government.

I attach an annex which addresses the questions posed in your correspondence. I would be happy to expand in more detail on any aspect of the response if necessary. I would like to thank you for your continued support for the Health and Care Staffing Act as we reach the final stage of implementation.

Yours sincerely,



MICHAEL MATHESON

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Implementation of the Act

- Delays to implementation of the Act (prior to publication of the implementation timetable in June), including why this has been so delayed and if aspects of the implementation timetable have been undertaken earlier.
- The unintended problems that the Scottish Government is seeking to guard against in discussions with health boards.
- Work undertaken with trade unions to manage implementation of the Act.

As the committee will be aware enactment of the Health and Care (Staffing) (Scotland) Act 2019 (HCSA) was paused at the start of the Covid-19 pandemic to enable the Scottish Government, Health Boards and other agencies to focus on managing their pandemic response. A number of work streams, however did continue throughout this period such as the maintenance and development of staffing level tools, professional judgement tools and real-time staffing assessments.

The Scottish Government also continued to fund workforce lead staff within every Health Board to ensure awareness and engagement with the details of the Act continued over this period and so that implementation could restart quickly when deemed appropriate.

The development of a methodology and approach to real-time staffing assessment through the pandemic was an enabler to support staffing for in-patient services. This also provided a platform for the development of the current real time staffing resource.

The Scottish Government has given due consideration to the time needed to engage, educate and prepare all responsible organisations with regard to this legislation and have judged the timetable published in June 2022 to be adequate.

In response to your question about unintended problems, the Scottish Government is holding extensive dialogue with Health Boards at all levels to understand any likely unintended consequences. This is particularly relevant given the very tight fiscal constraints within which the Boards are operating. This includes giving reassurance that activities and processes taken to guard against unsafe staffing should continue as they do currently. This also includes any changes to service provision and emphasising that elective activity should not be reduced to consolidate the workforce. It also includes informing Health Boards that staffing in professions covered by the Act and the Common Staffing Method should not be prioritised over other essential staff groups.

A range of trade unions have been engaged with implementation of the Act and included in decisions when setting the new timetable to commencement. Several unions joined and supported development of the statutory guidance chapters and some continue to be part of Boards and Groups working on the implementation of the Act. Officials also regularly update the Scottish Terms and Conditions Committee (STAC) group on implementation progress which includes representatives from various unions.

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Testing and consultation

- When the analysis of responses to the Scottish Government’s public consultation on the statutory guidance will be published and any plans to consult with stakeholders as a result.
- How the Scottish Government has engaged with all health and social care providers, professional groups and the public in developing guidance for health and social care providers.
- What aspects of the legislation has been tested with each NHS board, what has this involved and what lessons have been learned.
- Work undertaken to assess readiness of the social care sector, particularly in relation to the development of planning tools.
- Work underway with the Care Inspectorate (SCSWIS) on the development of staffing methods.
- Work undertaken to test operationalisation of the legislation with all social care providers.

The analysis of responses to the public consultation was published on 3rd January 2024 and is available here: [Consultation on the Health and Care \(Staffing\) \(Scotland\) Act 2019 Draft Statutory Guidance: Analysis of Responses - gov.scot \(www.gov.scot\)](https://www.gov.scot/Information/Consultation/Consultation-on-the-Health-and-Care-Staffing-Scotland-Act-2019-Draft-Statutory-Guidance-Analysis-of-Responses). Following the consultation, Scottish Government officials will now reflect and finalise the statutory guidance. We will involve stakeholders in this process as appropriate. Our aim is to publish the final guidance on 1 April 2024 to coincide with the commencement of the Act.

The Scottish Government has engaged with health and social care providers, professional groups and the public in developing guidance for health and social care providers.

The statutory guidance for the HCSA is comprised of a number of chapters, each aligned to the different duties within the Act. Each chapter was drafted by a working group comprising of representatives from the Scottish Government and external stakeholders, including Health Boards, special Health Boards, Local Authorities, Integration Authorities, Healthcare Improvement Scotland (HIS), the Care Inspectorate (CI), professional bodies, trade unions and professional regulatory bodies. The draft guidance was published for public consultation, which ran from 22 June to 19 September 2023.

Officials in the Act implementation team, supported by HIS and CI, delivered a series of webinars outlining the content of the different chapters and duties. The webinars were recorded and have been shared widely for staff use across health and care services, to further support engagement and promote participation in the public consultation. The webinar script and recording is also being used to develop an accessible learning resource which we anticipate will be available in early January 2024.

All aspects of the legislation have been tested by Health Boards. The testing project began in spring 2023 with the objective of understanding whether the guidance chapters were fit for purpose and that reporting mechanisms are in place which will work in practice. Ten NHS Boards volunteered to undertake testing, a combination of territorial and national Boards committed to testing guidance chapters locally and share outputs through the steering groups using the SWOT analysis tool. Two Boards, NHS Lanarkshire and NHS 24 are testing all guidance chapters.

Testing has now run over three quarters and in a variety of NHS Boards i.e. island Boards, medium sized Boards, rural Boards and large central belt Boards.

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An evaluation has been sent out to Boards to report on feedback from testing. In summary, the feedback sets out:

- No corrections were required to the guidance chapters;
- A small number of respondents felt the guidance chapters were not easy to understand and further clarifications were needed;
- Evaluations regarding *Chapter 5 - Escalation and Real Time Staffing Assessment* suggested that the guidance didn't always easily apply to every profession.

Since this feedback was received officials have worked to improve clarity. Whilst responders felt the legal text was difficult to follow, the publication of quick guides has been reported to be very helpful in supporting staff with a better understanding of chapter requirements.

Areas of good clinical practice have also been identified and shared, with some examples being adopted by other Health Boards. For example, after testing *Chapter 5 – Escalation and Real Time Staffing Assessment*, NHS24 developed an escalation framework for decision making on real time staffing. Although this is a national Board it has become a reference via an online resource supported by HIS, and other Boards have adapted this for local use (particularly for use out of hours).

Through engagement with NHS Boards and the testing project, we understand a large portion of Boards have representation from Health and Social Care Partnerships (HSCPs) on local steering groups in order to take a whole system approach to Act readiness.

The CI have been commissioned by Scottish Government to engage with care services to help them prepare for these changes within this primary legislation. As the HCSA is very similar to the existing secondary legislation governing care services, the preparations for commencement have focussed on engagement and raising awareness of the Act, the current SSI (which will ensure that the CI retains its enforcement powers after the commencement of the Act) and what will be different for care services post-commencement. Through this commission, the CI have undertaken extensive engagement with care service providers, and developed a range of resources to support, inform and enable care services to meet their legislative duties.

The CI are a key delivery partner for successful commencement of the Act and also provide regular updates on their testing plan. The testing in care services is limited to Local Authority and Integration Authorities on their new duty to report on the planning of any new contracts, arrangements or agreements which begin after commencement. Work has also been undertaken to test the operationalisation of the legislation with social care providers. The focus for testing with the CI is to:

1. Work with Health and Social Care Partnerships who commission or secure services from another organisation;
2. Development of an app, which has been completed, to connect with care homes and will capture testing the Staffing Method Framework with 20 volunteer care homes. This work started in November 2023.

The CI has undertaken extensive engagement and also embedded this work within their existing structures of inspections. They have also developed a range of resources to support care services to help enable appropriate staffing, which are available on their website.

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As there is no single recommended validated staff level tool available in care services and there will be no legislative duty for care services to use a planning tool on 1 April 2024 the CI can, if they wish, recommend to Scottish Government Ministers the use of a staffing method, inclusive of a named staffing level tool, but this will not, nor was it intended to, be in place before commencement.

Work is already underway with the CI to develop a staffing method and they have been engaging with the adult care sector to consider the benefits of a staffing level tool. The CI are expected to conclude this work early 2024 and make a recommendation about the development of a staffing method, including the use of a staffing level tool, to the Scottish Government. It will then be for Scottish Government Ministers to determine whether they wish to commission this development.

Workforce planning, recruitment and retention

- Work the Scottish Government undertaking to address workforce issues, and, more particularly, national workforce planning issues in health and social care. Please include further detail on the government's strategic workforce planning to meet the demands of this and other legislation (such as Self-Directed Support and the National Care Service), complete with projections of staff in all categories required to fulfil these demands.
 - Work underway in relation to recruitment and retention, pay and conditions, and fair work for health and social care staff.
 - Work underway to tackle the over-reliance on agency staff, and how the Scottish Government foresees that implementation of the Act will reduce reliance on agencies.
 - Work undertaken by the Scottish Government to ensure workload planning in particular health and social care providers is linked with national workforce planning.
 - How the Scottish Government foresees implementation of this Act will work in conjunction with the proposed National Care Service.
 - How the Scottish Government implementation team are collaborating with other teams in the Scottish Government, such as in relation to patient safety and the National Care Service, to align different programmes of work.

The National Workforce Strategy for Health and Social Care, developed in partnership with COSLA, outlines the vision for a sustainable, skilled workforce with appealing career options and fair treatment for all. The strategy encompasses the entire workforce journey, including planning, attracting, training, employing, and nurturing the health and social care workforce.

The Scottish Government actively supports Health Boards across Scotland to plan locally for service need and for service delivery. The Scottish Government has invested over £18m to recruit an additional 1,250 nurses, midwives and Allied Health Professionals from overseas by 31 March 2024 with over 1,000 having already joined NHS Scotland since October 2021. In addition, the Scottish Government commissioned the Centre for Workforce Supply (CWS), hosted by NHS Education for Scotland (NES), to hold medical insight meetings with each individual Health Board. The aim of these meetings, held throughout October and November 2023 was to better understand the medical workforce gaps, to scope out whether international recruitment could help with filling vacancies, to identify any innovative supply initiatives currently underway and understand what centralised support from the Scottish Government or the CWS could help Health Boards in recruiting medical staff. Analysis of the information gathered is currently underway.

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The attraction and retention of people into nursing and midwifery is a key part of the remit of the Nursing and Midwifery Taskforce, chaired by myself as Cabinet Secretary for NHS Recovery, Health and Social Care. The Taskforce will recommend a workplan of actions to support longer-term workforce sustainability within nursing and midwifery. The group includes recognised nursing and midwifery workforce experts alongside representatives from the NHS, Scottish Government, academia, the RCN and the RCM.

In terms of retention, we recognise that flexible working arrangements are key to not only attracting and recruiting staff but also to retaining the workforce. 'Supporting the Work-Life Balance' workforce policies provide staff with a range of flexible working options to help them to balance their lifestyle whilst maintaining and promoting the best possible service. Furthermore, the Improving Medical Retention Advisory Group has produced recommendations which are available to support Boards in retaining consultants in the latter stages of their career.

A national marketing campaign for adult social care recruitment has been ongoing for the past four years, with the current year featuring shorter, targeted bursts of activity to create awareness among specific audiences. Efforts are being made to encourage more young people to join the adult social care workforce through collaborations with organisations like The Prince's Trust and Developing the Young Workforce Teams.

An international recruitment pilot project has been funded to support providers in developing an ethical and sustainable international recruitment pipeline. Ongoing collaboration with the Scottish Social Services Council (SSSC) and NES aims to build on the National Induction Framework launched in 2022, enhancing career pathways, continuous professional learning, and staff retention.

We are also developing opportunities for existing staff to access learning and development that can widen access to registration and thus ensure a robust pipeline in the years ahead. These "earn as you learn" models including apprenticeships are largely an untapped resource which can assist in meeting our future workforce demands. Prior learning recognition and micro-credentialling, and the Anchors agenda are some of the areas we want to develop that can allow a pathway to registered roles and widen access to careers within health and social care.

Work is ongoing to support the workforce and education of the Allied Health Professions (AHP) and Healthcare Science professions. The AHP Education and Workforce Policy Review was completed with high level recommendations in mid November 2022. These recommendations were approved by the former Cabinet Secretary and then published on 24 February 2023. This review considered the actions necessary to deliver a national education and workforce plan for AHPs; it gave full consideration to all aspects of workforce measurement, planning and education needs for the future. An advisory group, chaired by Carolyn McDonald, Chief Allied Health Professions Officer, has been established to oversee the effective implementation of the recommendations and the first meeting was held on 9 October 2023.

The Scottish Government is also undertaking work to develop a strategic approach to healthcare science in Scotland – in recognition of the unique contribution the scientific workforce can make to positive patient outcomes, and in supporting national priorities such as the recovery from COVID-19 to ensure health services are fit for the future. Scottish

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Government officials are currently engaging with stakeholders, including the workforce, around what this strategic approach should look like. An 'anchor paper', which the Scottish Government intends to publish later this year, will set out key themes and priority areas for future work.

In respect of progressing fair work for social care staff, the First Minister announced his intention that all adult social care staff responsible for delivering direct care through commissioned services, and workers delivering children's services, will receive a minimum pay rate of £12ph from April 2024 - up over 10% from the current minimum rate of £10.90. This maintains the Scottish Government's commitment to ensure payment of at least the Real Living Wage.

Work is currently also underway on roll out of an Effective Voice Framework for the sector. Engagement with an initial cohort of approximately 30 volunteer organisations representing different aspects of service delivery, scale of operations and geographic locations across Scotland, has begun and the framework will be tested and evaluated over the course of the next 12 months ahead of national deployment. Work on the development of a Sectoral Bargaining approach is also being taken forward and, despite the complex and fragmented nature of the workforce and associated service delivery, is progressing well reflecting effective partnership working with key stakeholders including, unions, service providers and local government. Whilst pay will be a central part of this, priorities have also been identified for improving wider terms and conditions subject to identifying appropriate delivery mechanisms and securing funding.

The Scottish Government is committed to ensuring transparency around NHS Scotland's approach to the use of agency workers and publishes annual statistics on the level of use and expenditure in relation to this group. The duties contained in the Act will build on these existing arrangements and support us to monitor the impact of the improvement activity we are taking forward in this area.

In the case of nursing, our dedicated Supplementary Staffing Task & Finish Group has brought forward a number of measures over the course of this calendar year to reduce reliance on the most expensive nurse agencies, that is those who do not appear on the relevant NHS Scotland national procurement framework. The introduction of additional controls, supplemented by a refreshed procurement framework, has resulted in significant progress being made, with Boards reporting large reductions in the use of those 'off-framework' agencies as well as an overall reduction in the use of agency nursing staff. Building on this, the Group has now committed to a process for ending the use of non-registered clinical support workers supplied by agencies by the end of the current financial year, followed by further activity throughout 2024/25 to end the use of registered agency nursing staff in all but exceptional circumstances.

With regards to agency medical staff, we have established a Medical Workforce Sustainability Group (MWSG) to identify actions designed to ensure NHS Scotland has a resilient supply pipeline of medical practitioners, thereby reducing reliance on medical locums. This has involved commissioning a review of the model used to identify future service requirements with regards to doctors in training and a related piece of work focussed on improving the geographic distribution of training posts so as to maximise their contribution to service resilience. The group has also endorsed wider work to create additional clinical capacity through expanded use of specialty and specialist doctors as well as other new or

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less common healthcare roles, in particular Medical Associate Professionals. Finally, the group has commissioned the CWS to take forward a programme of work to improve practice in relation to the recruitment of medical staff from within Scotland, elsewhere in the UK and internationally.

As well as taking steps to further strengthen the supply of medical staff, MWSG has also commissioned the development of an action plan designed to ensure that NHS Boards are securing best value whenever they access medical locum support. The action plan is due to be finalised in early 2024 and will build on extensive engagement with Boards about the arrangements currently in place for engaging medical locums.

All of the above referenced work is underpinned by an ongoing programme to improve the operation of staff banks which are recognised as the preferred mechanism for accessing flexible staffing across NHS Scotland.

Local employers are being supported to increase capacity, including funding to allow social care providers to advertise vacancies on the MyJobScotland recruitment website at no additional cost. All care providers in Scotland are welcome to use this offering, including those from the private sector. From February 2021 to the end of October 2023, this funding has allowed 21,386 jobs to be posted saving providers approximately £1.9 million.

Whilst many authorities in Scotland have existing strategies looking at workforce planning, as the 2021 Independent Review of Adult Social Care in Scotland noted, there is currently no national oversight of workforce planning for social care in Scotland. To ensure that the social care sector can anticipate and respond to future challenges, and to ensure the long term sustainability of the sector, work is underway to better understand what options exist to deliver workforce planning at a national level, both now and as part of the NCS, that respects existing arrangements whilst addressing any gaps.

There is agreement with the National Care Service (NCS) Bill team that the NCS legislation will reflect and align with the Act, to ensure the current duties and scope of the Act are retained in a future NCS.

The Act implementation team have undertaken broad engagement internal and external to Scottish Government, seeking to identify any impact from the Act across different government policy. This engagement has been welcomed and resulted in a collaborative approach to supporting service providers understand and prepare for commencement, for example, primary care services.

Relevant policy teams are members of the Act Oversight Board and receive assurance on the progress of the programme at each meeting.

The Act team have also presented at different internal fora and produce a regular newsletter updating on activities to support Act implementation.

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