

RCN Scotland
42 South Oswald Road
Edinburgh
EH9 2HH

Colin Poolman
Director

Telephone: 0131 662 6131
Email: colin.poolman@rcn.org.uk
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Via email: hscs.committee@parliament.scot

Dear Convener

The National Health Service (Common Staffing Method) (Scotland) Regulations 2024

Ahead of the Committee's consideration of the above regulations (SSI 2024/43), I am writing to share RCN Scotland's concerns regarding the calculators that sit within some of the key staffing level tools used in the Common Staffing Method. We are also disappointed that the way these regulations are drafted makes it harder to correct the errors identified in these staffing level tools.

The Health and Care (Staffing) (Scotland) Act 2019 places duties on NHS boards to use the Common Staffing Method in all areas where there are workforce and workload planning tools set out in legislation, which is what this SSI achieves. 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 establishment i.e. how many staff are required in a particular clinical setting to provide safe and effective care.

Last year we became aware of the details of some of the calculators that sit within key staffing level tools for nursing. We believe these calculators are flawed and fundamentally undermine the effectiveness of these tools in allowing services to plan the number, and skill mix, of staff needed to provide safe and effective care. Essentially, the tools are understating the required nursing staffing levels and establishments are being set that are lower than what is required to actually fill staffing rosters safely. Those responsible for staffing in a clinical area (for example a Senior Charge Nurse) are then unable to fill their nursing rosters because the establishment for that area isn't high enough. The evidence is clear this is driving increased bank and agency spending, as clinical leaders try to fill their rosters, and, in many cases, leading to unsafe staffing levels.

Since early September 2023 there have been several meetings between RCN Scotland, Health Improvement Scotland (HIS) - who are responsible for maintaining workforce tools and developing new ones - and CNO Directorate to discuss our concerns which are detailed further below.

Professional Judgement (PJ) Tool

The PJ Tool is based on users' professional opinion on how many staff are needed to carry out the workload required. The PJ Tool is set up to allow nurses and midwives to record information about the number of staff, in their professional opinion, required to undertake the workload activities in a clinical setting per shift over a particular time i.e. two weeks.

The PJ tool automatically includes a 22.5% Predicted Absence Allowance for nursing and midwifery staff (to cover annual leave, maternity leave, sickness absence etc.). There is also a deduction for unpaid breaks. The calculator of the PJ tool then uses the information inserted to calculate a required whole time equivalent (WTE) to staff that particular service.

However, the current tool does not capture any shift overlap and the need for staff to handover between shifts. As highlighted above, the tool also automatically removes time for unpaid breaks. Our position is that the time removed for breaks exceeds the current unpaid break allowance and should not be removed at all, as having a break is a legal requirement and therefore should be considered as part of the workload.

The combination of not capturing shift overlap and removing time for breaks, results in the PJ tool calculating the required WTE substantially below that which is required.

The following example illustrates this point. A senior charge nurse uses their professional judgment to conclude that a clinical area requires 5 nurses per shift over 24 hours and inputs this into the PJ tool. The current version of the PJ tool will state that the required WTE establishment is 25.5. However, the required WTE establishment should be 29.75 if calculated on hours worked, i.e. including breaks and handover time. This is a difference in the establishment of 4.25 WTE nurses; a substantial difference.

HIS concedes that in critical care settings the calculation should include handover time and breaks and the workforce calculator in this setting reflects this position. HIS has responded positively to our feedback by providing a workaround for the PJ tool that will capture staffing requirements as part of shift handover and slightly reduces the amount of time removed for breaks. However, this still leaves the calculation below that which HIS determine is required for critical care areas. Our position is that the calculator to determine staffing in all care settings should be the same as critical care, with no time removed for breaks.

**Royal College of Nursing
of the United Kingdom**
20 Cavendish Square
London W1G 0RN
Telephone:
+44 (0) 20 7409 3333
RCN Direct 0345 772 6100
rcn.org.uk

President
Sheilabye (Sheila) Sobrany
RGN PG Cert HE MA HE
SFHEA
**General Secretary &
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Pat Cullen

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Adult Inpatient Tool

The current Adult Inpatient Staffing Level Tool calculations are derived from observation studies that categorise nursing staff time into direct care, indirect care, associated workload and personal time. The tool removes a percentage of time that was observed for personal time i.e. time that was observed as unoccupied and breaks as these are regarded as 'unproductive time'. 'Unproductive time' is defined as an activity that makes no contribution to the service and is therefore removed from the calculation as no care is being provided.

This approach is unreasonable as time for a break is a legal requirement and to be able to have a break the member of staff must be on shift and present. The RCN's view is that this time should be included in nursing workload calculations.

Further, the observation studies that form the basis for the calculations are carried out over 24 hours. However, to facilitate patients' sleep, it is to be expected that the level of direct and indirect care will be reduced overnight. This would therefore result in a higher percentage of time being considered unproductive. Removing this time from the calculation does not take into account that a critical level of staffing is required to maintain patient safety overnight.

In response to the RCN's concerns HIS has agreed to establish an expert advisory group to review the current Adult Inpatient Staffing Level Tool with a view to recommending any changes to ministers in October 2024. However, the current Mental Health and Learning Disability staffing level tool is being reviewed at the moment. Observational studies are planned to take place soon and currently time for paid and unpaid breaks, toilet time etc. is being considered personal/unproductive time and will potentially be removed from the calculation.

On the specific point regarding the removal of unpaid breaks from both the PJ tool and the staffing level tool, HIS have confirmed that they are not in a position to recommend the inclusion of unpaid breaks without a Policy Directive.

We believe that the issues outlined above, within both the PJ tool and staffing level tools, are resulting in lower than required establishment calculations and is having a negative impact on nurses' ability to provide safe, effective, high-quality care and on their own wellbeing.

Required next steps

As highlighted above, since we became aware of these issues, we have had several meetings with HIS and CNO Directorate to discuss our concerns. While there has been progress with HIS and Scottish government accepting that there are flaws within the

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existing tools, and they have committed to continue to work with stakeholders, these have not yet been corrected. We are therefore calling for Scottish government and HIS to set out a clear timeline on how these issues are going to be addressed. Given that these fundamental flaws within the staffing tools' calculators are contributing to an unsafe environment for patients and nursing staff, they need to be addressed urgently.

We also have concerns around the ongoing funding, from Scottish Government, to HIS to support the Healthcare Staffing Programme and to meet their duties within the 2019 Act. Similarly, we are also concerned about the funding that Care Inspectorate requires to meet their duties within the legislation. This is an area that we would suggest the Committee scrutinise going forward.

SSI schedule

Regulation 3 and the schedule prescribe the staffing level tool to determine appropriate staffing levels for each kind of health care provision listed in column 1 of the table. Column 2, which lists the staffing level tools, includes which version of the tool should be used.

We 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 are changed or updated. As we outline above, the current tools are not fit for purpose and require to be updated to be truly effective. Requiring the regulations to be updated, with the associated parliamentary process, every time there's a need to change or update a tool is not a responsive approach.

This is frustrating as this issue could have easily been avoided if the Scottish government had laid the draft SSI with some time to spare, instead of at the last moment ahead of 1 April 2024. Due to the importance of implementing the provisions within the 2019 Act on 1 April, we are not calling for this SSI to be annulled. But as we are approaching 5 years since the Act was passed, it is extremely frustrating to find ourselves in a position where there is insufficient time to ensure the SSI doesn't lead to unintended consequences as outlined above.

I hope this information supports the Committee's consideration of these regulations and supports ongoing scrutiny of implementation of the Act. We will continue to work positively with Scottish government and HIS as this groundbreaking legislation moves forward.

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Please don't hesitate to get in touch if you'd like any further information.

Yours sincerely,



Colin Poolman
Director

Cc Ann Gow, Deputy Chief Executive, Director of System Improvement
Alex McMahan, CNO

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of the United Kingdom**
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