The Royal College of Nursing response to the Scottish Government consultation on Safe and Effective Staffing in Health and Social Care.

Question 1: Do you agree that introducing a statutory requirement to apply evidence based workload and workforce planning methodology and tools across Scotland will help support consistent application?

. As such (and given there is no other space to provide general responses), our first comment is that this opening question does not adequately set out the purpose of this important legislation in achieving safe and effective staffing and care for people using services. The consultation generally focuses only on one aspect of delivering safe and effective care through the technicalities of implementing workforce and workload planning tools and methodologies.

The RCN is supportive of the Scottish Government bringing forward legislation to ensure safe and effective staffing levels in health care environments because of the opportunities it presents to impact positively on the safety and quality of care and the outcomes for individuals using services by ensuring that the right staff with the right skills are in place to deliver care in all settings and at all times. This piece of legislation is key to addressing the recommendations of the Francis Report and the Vale of Leven Inquiry with regard to staffing and quality. As the Scottish Government has noted in the new National Health and Social Care Workforce Plan (Part 1): about the relationship between registered nurse s (see also: https://www.rcn.org.uk/employment-and-pay/safe-staffing). The Bill should also help to

all those involved in delivery and provide a marker to measure person-centred success. Landmark Scottish mental health and integration legislation are prime examples of this.

Looking again at the integration planning and delivery principles in the Public Bodies (Joint Working) (Scotland) Act 2014, many of these principles could be helpfully applied, with little if any amendment, to a Safe and Effective Staffing Bill. These principles already have support across sectors following significant previous engagement. Using these quality-based principles as a basis for new safe and effective staffing principles would also aid delivery agencies across health and social care by providing coherence of purpose in both service planning and delivery and setting workforce plans to meet assessed needs.

Though the RCN would prefer to see quality mentioned before sustainability, the aim set out in the new workforce plan, to which this legislative work must be clearly aligned, also gives a :

> *Getting the right people into the right place, at the right time, to deliver sustainable and high quality health and social care services for Scotland's people.*

This leads to a linked issue. The current Nursing and Midwifery Workforce and Workload Planning Tools provide a baseline nursing establishment to meet the average workload in

through workforce and workload planning to improve outcomes. Again, in reference to the integration principles, the RCN would note that words s ty are included within the Public Bodies Act.

In answer to the specific question asked: legislation in and of itself will not automatically improve consistency in application, even if that were the primary goal sought. The Scottish Government mandate on the tools has not yet been fully delivered. How the additional lever of legislation will direct effective application of the tools will depend on the detail and scope of the draft Bill but the RCN is clear that a sophisticated legislative approach will be required to increase leverage, in a proportionate manner, over and above the current NHS mandate of the Nursing and Midwifery Workforce and Workload Planning Tools. We do not expect this to be a very short piece of legislation, given the complexities to be captured.

The RCN is keen to support legislation which will improve the safety and quality of care, and health and wellbeing outcomes, by providing a robust legislative framework for safe and effective staffing that will support the very best practice and drive improvement where needed. At this time it would be helpful to have clarity on the scope, membership and timetable for engagement forums to influence the progress of this legislation, and, in particular, links to the new National Workforce Planning Group. Early engagement across stakeholders as legislation is drafted will be key.

Question 2: Are there other ways in which consistent and appropriate application could be strengthened?

ability to provide safe and effective staffing for people using services if consistency in provision over time is to be ensured. These include:

- The inclusion of real time data provision and decision making in existing services to ensure quality and safety at the point of care.
- The use of tools and methodologies to support service planning, particularly given the significant transformation agenda now in play from localities to regional and national services. Plans to resource future services must be based on robust workforce and workload methodologies.
- Duties on the Scottish Government (and in future, other education commissioners) to use robust methodologies from organisations to project future workforce need and commission pre-registration places, as well as post-registration education and training. The RCN is clear that neither organisations nor nursing leaders can guarantee safe staffing for the future if the national supply of nurses and midwives working at all levels is not forecast and resourced robustly.

Linked to this, the Bill will need to be sensitive to the different spheres of responsibility within professional structures around workforce and workload planning. So, for example, in the NHS a Senior Charge Nurse or Community Team Leader holds responsibilities around safe staffing within a given setting on a day to day basis. A nurse member on an Integration Authority board holds responsibilities around providing advice on planning for and resourcing safe nursing staffing across community services. The Executive Nurse Director on an NHS board holds an organisational responsibility for ensuring nursing and midwifery staffing levels. The Bill requires a sophisticated response to ensure professional leaders in each sphere are supported by this legislation to assist organisations to discharge their duties to provide safe and effective staffing.

Given the place of NHS Education for Scotland in and around workforce and their frequent mentions in the new National Health and Social Care Workforce Plan (Part 1)

Duties are placed on organisations to develop, publish and implement risk plans, in a timely manner, in collaboration with staff (including those with workforce planning responsibilities, such as Senior Charge Nurses/Community Team Leaders, and trade union representatives), where there may be a gap between the safe and effective

Aspirations for extension will provide some complexity in setting the scope of this Bill effectively now, whilst ensuring it is also future proofed. The RCN understands that, within this consultation response, there are proposals that fit easily within the scope of large NHS organisations, but could have far more significant consequences for other providers, such as small care home providers, in the future.

However, we are also clear that, as major providers of front-line clinical care, constituting the largest proportion of the NHS workforce and with significant impact on the outcomes of service users, this legislation is required now for the nursing and midwifery workforce. The Bill cannot weaken the potential positive impact of this legislation by diluting provisions in order to remain theoretically inclusive for the future.

We ask the Scottish Government to define, *in primary legislation*, that provisions will relate to the nursing and midwifery workforce and NHS functions from enactment, but allow each significant provision to be extended, individually, by Ministers in the future by regulation. We believe this would balance the need for robust legislation now and proportionate extension of relevant sections of the Act in the future as new work is developed and other professions and sectors are engaged. Clarity on this approach from the start would have a significant impact on drafting.

We would hope that statements accompanying the Bill when published would set out some timescales for extension so as not to lose momentum from the task.

3B: Do you agree that the requirements should be applicable in settings and for staff groups where a nationally agreed framework, methodology and tools exist?

Yes see answer 3A.

Question 4: How should these proposed requirements apply or operate within the context of integration of health and social care?

The RCN is clear that the provisions of this legislation must apply equally to Integration Authorities from commencement, at least in relation to nursing and midwifery staff delivering delegated NHS functions. We appreciate the practical difficulties of separating legislative duties on staffing by sector and profession in light of the integration of health and social care. This is the same dilemma faced by the Scottish Government in attempting to produce a unified health and social care workforce plan. However, the evidence on the impact of nurse staffing on patient outcomes means Scotland should not delay primary legislation which will guarantee safe nursing staffing to the public.

Decisions being made by Integration Authorities are already having a profound effect on the shape of the nursing workforce in many areas as they reconfigure services and/or are making savings in the nursing workforce. They now, in practice, determine nursing numbers and skill mix in the NHS, across all community and significant parts of the acute sectors - though they are not currently employers. This legislation should place equal duties on Integration Authorities and NHS Boards, from the outset, on all elements of ensuring safe and effective staffing in real time services, in planning new and redesigned services and in planning the future workforce. This will include consideration of the role of nursing leaders within both governance and delivery functions of Integration Authorities.

Whilst delivery of integrated care is becoming clearer, with those structures set out in legislation, we are far less clear about the structures, governance and plans of emerging regional approaches emerging in the NHS. The RCN is clear that the legislation must apply

to these new structures too; but without further information on regional approaches it is hard to suggest how this might be best drafted.

Question 5: A triangulated approach to workload and workforce planning is proposed that requires:

- **Consistent and systematic application of nationally agreed professional judgement methodology and review of tools to all areas where current and future workload and workforce tools are available**
- **Consistent and systematic consideration of local context**
- **Consistent and systematic review of quality measures provided by a nationally agreed quality framework which is publicly available as part of a triangulated approach to safe and effective staffing.**

Do you agree with the proposal to use a triangulated approach?

Yes, we agree that triangulation is key and is one way to mitigate the limitation of the Nursing and Midwifery Workforce and Workload Planning tools in providing a single number for the total staffing required for average workload without, for example, identifying the skill mix required to address acuity and demand. Triangulation should support real time workforce decisions to be made far more responsively, given that many workforce and workload tools are run relatively infrequently but acuity, demand and staffing availability (due to sickness for example) change frequently. Of nursing staff in Scotland responding to the RCN survey who said that care was compromised on their last shift, 50% reported that

high quality care on their last shift, and two fifths (40%) reported higher patient demand than expected/planned had impacted the ability to deliver high quality care.

However, the wording in the proposals does require some adjustment.

The legislation should not limit professional judgement to the use of a nationally agreed methodology alone, but the RCN acknowledges that professional judgement should be based on clear evidence. We note in other parts of this response the importance of the legislation setting a framework of duties on any relevant organisation to seek, record and respond to the advice of nursing leaders with workforce and workload planning responsibilities. In developing that credible advice nursing leaders with workforce and workload planning responsibilities must be able to use the most up-to-date evidence available to them and which is appropriate to their context. This should include the use of real time data on, for example, acuity, dependency, caseload, available staffing numbers and skill mix, as well as the use of professional guidance from bodies such as the RCN itself.

The RCN is clear that primary legislation should not name specific tools and methodologies as this would severely limit the long-term relevance of the Bill which would not reflect developments in the field. We would expect to see this detail in secondary legislation or statutory guidance.

Bullet point 2 requires much more clarification to ensure avaii

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judgement. This should be reflected in the draft Bill. Implementation of a full education and training programme should also be included in the financial memorandum to the Bill, much as resource was allocated some years ago when the Nursing and Midwifery Workforce and Workload Planning tools were first established.

Question 10: Do you agree with the proposal to require organisations to ensure effective, transparent monitoring and reporting arrangements are in place to provide information on how requirements have been met and to provide organisational assurance that safe and effective staffing is in place, including provision of information for staff, patients and the public?

Yes. We have included our answer to questions 14 and 15 here.

The consultation covers much of what we would expect to see. However, we note that professional leadership in nursing and midwifery is absent from the groups listed here and should be included explicitly. The voice of senior nurses, who have workforce and workload planning responsibilities, in reporting and monitoring safe and effective staffing must be underpinned in the legislation. Again we note the guidance related to the Chief Social Work Officer and their reporting functions. More could be done to learn from this for nursing in relation to safe staffing legislation.

As noted above, the RCN would also like to see equal emphasis placed on the role of care and clinical governance committees and on staff governance committees, given that we wish the Bill to be rooted in issues of safety and quality. We note here that the provisions as included in the consultation document relate only to NHS-focused structures and would need to be revised and re-drafted if the Bill is to remain open to future expansion.

As also noted in earlier answers, the RCN would wish to see a national reporting template developed for nursing and midwifery to allow benchmarking of performance including quality outcomes and weighted to particular context, such as service user needs or configuration of available space to direct improvement support effectively. This could build on early work to this end which was not taken forward.

We have also noted a role here for NHS Health Improvement Scotland in providing scrutiny of safe and effective staffing which could build on their inclusion of workforce considerations in the

As currently proposed, this Bill risks putting in place legislation that will not improve the staffing available across Scotland to provide safe and effective care through a too narrow focus on technical process. A solution to this would be to rethink the scope of the Bill, as the RCN proposes, to ensure it underpins existing activity in the highest performing organisations, as well as providing support and direction to those requiring improvement around safe care and staffing. The Bill is unlikely to help to improve patient outcomes if it is not designed explicitly to do so. This could be easily remedied in the drafting process.

However, we are also aware of the consequences inherent in the RCN proposals to make this a more robust and effective piece of legislation. In particular:

NHS Board employers are in very different places in terms of their current nursing staffing provision. Creating a Bill with teeth to ensure patients have access to the right staff in the right place to deliver safe and effective care risks creating a downward spiral for poor-performing organisations if this starting point is not acknowledged. The support available through the financial memorandum for organisations to improve their capacity and capabilities alongside a clear timetable for enactment will be key. The Scottish Government must also ensure coherence between this Bill and implementation of the new National Health and Social Care Workforce Plan which is intended to improve recruitment and retention. We appreciate that giving additional investment to organisations with insufficient staffing may be perceived as effectively penalising organisations which *have* chosen to build in numbers, skill mix and ongoing education and development of staff over recent years. However, everything possible must be done to ensure a level playing field in terms of safety and quality across Scotland. The cost of bringing all boards up to par may be significant.

Many issues affecting staffing numbers are outwith the direct control of commissioning and delivery organisations. For example, determination of national supply and the barriers to employment in some areas (such as high housing prices or lack of work for partners of nursing staff) can hamper the ability of organisations to deliver the numbers indicated through triangulated workforce planning processes. Our proposals address this in part by ensuring the tools will be applied to defining student numbers and (re) designing services. Our proposals (see question 16) regarding the role of NHS Healthcare Improvement Scotland and applying the model of a Section 22 financial report to Parliament for safe staffing, would also call on Scottish Ministers and others to be transparent and open to public scrutiny in how they have discharged their responsibilities in ensuring safe, quality care through appropriate staffing. This would avoid all duties and risks being held, unfairly, by NHS bodies, Integration Authorities and, in future, other delivery and commissioning organisations. This leads to another point:

There is a risk and a fear among nursing staff that this Bill could place accountabilities on nursing leaders who may not hold the power and authority to effect change. The RCN is clear that our members cannot be exposed to such risks, which would not only be unfair, but could also impact on their Nursing and Midwifery Council registration. We have made a number of proposals to address this. Accountabilities for delivering safe and effective staffing must be organisational. The Bill must reflect different spheres of influence of professional leadership at different levels (with lessons from the

If the Bill focuses on nursing and midwifery staff and the NHS only from the outset it risks skewing resources for multi-disciplinary, multi-agency teams particularly in these times of austerity and rising demand. However, the Bill cannot set undeliverable duties on organisations or professions