

HEALTH AND SPORT COMMITTEE

HEALTH AND CARE (STAFFING) (SCOTLAND) BILL

SUBMISSION FROM UNISON SCOTLAND

UNISON is the largest union in Scotland's public services with members in many roles, caring, clinical and support across Health and Social Care. We appreciate this opportunity to take part in the Committee's scrutiny of the Health and Social Care Bill.

Do you think the Bill will achieve its policy objectives?

No definitive answer can be given to this question based on the Bill as it is being presented. For the Bill to achieve its objectives relies on a range of other mechanisms, outside of the Bill being put in place.

The Bill advocates a tool based approach. This is well established in acute care and it can easily be seen how such an approach can be adapted to Nursing Homes. It is however significantly less clear how this approach can be applied to community settings or social care.

Specifically, existing tools for the measurement of adequate staffing levels will require further development in the areas where they currently exist, and new tools for measurement will have to be developed in areas where they do not. Systems for deployment of such tools will need to be developed and methods of assessing whether they are effective will also need to be developed.

The Bill says nothing about how issues that arise or can be escalated should staff (or others) think that statutory obligations are not being met. Similarly there is no indication of how the improved level of transparency which we assume the Bill should be aiming to provide is to be delivered.

It is worth pointing out that making an existing duty statutory is in and of itself, going to change anything.

The Bill does not – but should - specify a named person in any organisation (Health Board, IJB, Local Authority, Care Provider etc) that comes under the scope of the legislation whose responsibility it is to ensure that the law is complied with. Whilst this in itself is a fairly minor and easily remedied detail it perhaps points to a bigger issue. Is this Bill to sit at the centre of an approach – or is it merely to provide another set of statistics? In our experience there are many Organisations in Health and Social Care fail to report adequately on existing legislation such as the Health and Safety at Work Act. We have concerns that any new legislation may not be taken seriously. This ties into issues of resourcing (which we appreciate are not part of the Bill but are related to its likely effectiveness). What will happen if compliance with the Bill imposes significant new costs on health or care providers?

We appreciate that there are areas of fine detail which will be subject to periodic adjustment and as such are best left to regulation. That said we feel that there is a

need for more detail in the Bill and it would be a mistake to leave significant matters unspecified to be filled in with post legislative regulation.

Whilst current operational matters are not a part of the Bill it would be remiss not to state that there is currently an issue with recruitment and retention across Health and Social Care. There are staff shortages in many areas. Employers in Social Care struggle to retain staff, Health Boards and IJB's struggle to recruit. Whilst there is no single reason, and no single solution for this problem, it won't be tackled without addressing pay and the steady decline in the real value of wages that has been defining feature of the last decade.

What are the Strengths of Part 2 of the Bill what are the weaknesses of Part 2 of the Bill?

Whilst the idea that Health Board/ Agency reports on how it has carried out the duties attached to the Bill annually may be reasonable, we are more concerned with how the actual performance is monitored and enforced on a more day to day level.

There does appear to be some tension between the expressed aims of the Bill to lay down standards yet not to dictate approaches. This is something that the Committee could usefully examine.

We welcome the commitment in the bill that Health Boards must encourage employers to give views on staffing arrangements and show that they have taken those views into account when determining safe staffing levels. More detail as to how this would be done would be useful.

We accept that not everything can be written into legislation. In accepting this though we do think there should be more detail written into the Bill. Section two of the Bill gives Scottish Ministers enormous powers to vary the provisions of the legislation – prescribing all of the Tools and the frequency with which they are used, the ability to change the description of a type of Health Care and who is to provide it – all through regulation. Whilst we do not suggest that this is intention of the Scottish Government, such is the scope Ministers will have through regulation that 'safe staffing' could mean more or less whatever they want it to.

With that caveat we do welcome the commitment in the Bill that Ministers consult with Trade Unions when compiling guidance on the use of the common staffing method.

As mentioned previously the Bill says nothing about how issues that arise or can be escalated should staff (or others) think that statutory obligations are not being met and more detail needs to be provided on this.

How often the tools are run is crucially important as is the conditions under which they are run. To take a relatively simple example; Many acute wards were designed with an expectation of an 80% occupancy rate. Frequently however many are now operating typically with occupancy rates of 95% or higher. Are staffing levels to be determined by ideal standards or the existing realities of service provision

We do not think levels of compliance should be restricted to annual reports whether published or sent to Scottish Ministers. In acute settings we would expect regular updates on the extent to which staffing levels are being met to be published on

notice boards in the same way as other information is – other mechanisms should be found to in order that contemporary information can be found in other settings.

What are the Strengths of Part 3 of the Bill what are the weaknesses of Part 3 of the Bill?

Our concerns about lack of detail in Part 2 of the Bill are present in Part 3 of the Bill in a magnified form. Part 3 of the Bill is in several respects less a set of proposals than a list of intentions.

The approach to developing a staffing formula is, as with Section 2 of the Bill – to be tool based. Unlike in Health care settings though there is not a wide range of pre-existing tools which can be adapted or developed. Nor is there a pre existing evidence base from which they can be constructed. So there is a real question as to how the Bill will can be expected to be put into operation or practical effect before the development of these tools , which to be comprehensive will take several years. We wonder if this is the reason that it is not felt necessary to specify that Care Staff be trained up the use of the common staffing method in the way that is specified for Health Board staff in Section 2

The problems around escalation and enforcement mentioned regarding section 2 of the Bill are repeated in Section 3 of the Bill, where they are more serious. Given the fragmentation of delivery of care services the question of who the designated person with responsibility for ensuring safe staffing levels – and how they are reported is a serious one. This is particularly the case when rather than being provided directly care provision is commissioned from a third party. Who would be responsible for measurement – the private care provider or the IJB/ Council commissioning the care? This relates to the issues outlined earlier about the possibility of the legislation being ignored. Whilst there is obviously a wide variety of standards - it has not been our experience that detailed measures enforcing contract compliance has been a great specialty of commissioning bodies in Scotland. If this Bill is to be considered under that rubric it is more than possible that its intentions will not be realised.

Equally the person to whom staff can raise concerns – if they are say in a private care home – would it be someone in that firm? The IJB or Council providing the funding? SCSWIS. These are important issues which should be clarified.

Like Section 2 of the Bill – there is a comprehensive listing as to who will come under the scope of the Bill but there is next to no detail as to what this will mean for them in practice. Almost everything is to be left to the discretion of Ministers. All of our concerns around that section are also present here. Allied to that is concern over how tools and measurements will be developed. We are keen that Trade unions be fully involved with process.