



Law Society  
of Scotland

# Call for Evidence response

Health and Care (Staffing) (Scotland) Bill



July 2018

## Introduction

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The Law Society of Scotland is the professional body for over 11,000 Scottish solicitors. With our overarching objective of leading legal excellence, we strive to excel and to be a world-class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland's solicitor profession.

We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective solicitor profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through our active engagement with the Scottish and United Kingdom Governments, Parliaments, wider stakeholders and our membership.

The Society's Health and Medical Law Sub-committee welcomes the opportunity to consider and respond to the Health and Sport Committee's call for written evidence on the Health and Care (Staffing) (Scotland) Bill.

## Comments

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### **1. Do you think the Bill will achieve its policy objectives?**

The main aim is to provide a statutory basis for appropriate staffing in health and care settings. The Bill consists of guiding principles for duties imposed on health and care services in respect of staffing. The guiding principles are unobjectionable, but so general and multi-factorial as to leave plenty of scope for subjective judgment and the inevitable juggling of competing priorities. They do not of themselves pave the way to obvious staffing decisions, nor are they intended to do so, and it would be difficult to challenge a staffing decision of a health or care service provider on the basis of these.

The duties to ensure the provision of staff are likewise couched in general terms such as "appropriate" and "suitably qualified" with broad undefined aims such as "high quality health care".

The principles and duties are used to set the scene for the real point of the Bill which is the requirement that the Bill imposes on Health Boards and care service providers to follow particular staffing methods that are to be prescribed in regulations by the Scottish Ministers. All detail on how to achieve "appropriate staffing" will be in these regulations. These staffing methods will in turn require the use of "tools", such as a "staffing level tool" and a "professional judgement tool". The Scottish Ministers are also to prescribe the frequency at which such tools are to be used.

Another reason given for the statutory approach was to “embed” these tools in practice. However, as it is claimed in the Policy Memorandum that such tools are already currently in use in some quarters, but used inconsistently, it would be helpful to engage and persuade users through direct communication and education about the deployment and value of the tools. Otherwise there is a danger of users simply paying lip service to statutory requirements.

It is difficult to assess from the face of the Bill whether the main policy objective of appropriate staffing will be met, as the Bill is largely a vehicle for more legislation to come.

## **2. What are the key strengths of Part 2 of the Bill?**

The principles and duties laid down are unexceptional and could have been accommodated in guidance. The real essence of the Bill is the power to impose the regulations on staffing methods. The policy memorandum refers to a “rigorous, evidence-based approach” to staffing requirements and the tools are being or have been developed with this in mind. The Memorandum notes that there is “currently a suite of 11 specialty- specific staffing tools” available.

It is laudable to introduce consistency and scientific rigour into workforce planning, if possible. The success of the Bill relies on the quality of the tools and their ability to deliver a favourable outcome. This cannot be evaluated from the Bill.

## **3. What are the key weaknesses of Part 2 of the Bill?**

The staffing tools are presumably based on underlying judgements and criteria about the use of finite resources, levels of risk and ranking of competing priorities which are not set out in the Bill. Competing priorities will differ between Health Board areas and the tool kit will have to be sufficiently flexible to deal with the different staffing needs of, for example, Greater Glasgow and Clyde and Western Isles Health Board. Transparency requires that the underlying judgements and criteria are available for examination and debate.

## **4. What differences, not covered above, might the Bill make? (for example: will the Bill have any unintended consequences, will it ensure that staffing levels are safe, does the Bill take account of health and social integration, how are “safe and high quality” assured/guaranteed by the Bill?)**

The Bill stands or falls by the efficacy and robustness of the tools that are to be imposed as a consequence of the powers set out in it. There is a danger of inflexibility if the tools cannot adapt to changing or unusual circumstances, or if underlying assumptions are invalid. Safety and quality cannot be guaranteed by adherence to a formula.

Collecting and collating the necessary information to operate the tools could be a bureaucratic burden on frontline staff.

The Bill does not particularly take account of integration of health and social care except that both areas have separately imposed on them a similar list of principles and duties in regard to staffing.

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