

Final Child Rights and Wellbeing Impact Assessment (CRWIA)

Health and Care (Staffing) (Scotland) Bill

September 2018



Scottish Government
Riaghaltas na h-Alba
gov.scot

Final CRWIA - Web publication of Bill / Secondary Legislation CRWIA

CRWIA title Date of publication	Health and Care (Staffing) (Scotland) 7 September 2018
Executive Summary	<p>The aim of the Health and Care (Staffing) (Scotland) Bill is to help ensure improved outcomes for service users by putting in place a framework to support appropriate staffing for high quality care. Provision of high quality care requires the right people, in the right place, with the right skills at the right time to ensure the best health and care outcomes for service users and people experiencing care. The Bill will support the profession led development of evidence based approaches to workload planning that has been successful for nursing and midwifery to be shared across health and social care. Staffing tools and methodologies developed in this way will support local decision-making, flexibility and the ability to redesign and innovate in other health and care settings.</p> <p>The Bill creates a coherent overall legislative framework for staffing across the Health Board and care services landscape by setting out a requirement on Health Boards and organisations providing care services (those care services registered with and inspected by the Care Inspectorate) to ensure appropriate staffing and to consider staffing requirements according to a set of principles.</p> <p>The aim of this Child Rights and Wellbeing Impact Assessment (CRWIA) is to identify, research, analyse and record the anticipated impact of the Bill on children’s human rights and wellbeing in Scotland.</p> <p>All provisions of the Bill have been considered against the available evidence and assessed against the United Nations Convention on the Rights of the Child articles and the eight wellbeing indicators set out in Section 96(2) of Children and Young People (Scotland) Act.</p> <p>The Scottish Government considers that the Health and Care (Staffing) (Scotland) Bill will have a positive impact on these articles and indicators for all children using health and care services by ensuring appropriate staffing is in place across Health Boards and care services to deliver high quality care and meet the needs of the population, including children’s services. Ensuring robust evidence based workload and workforce planning and that the appropriate workforce is in place will support professionals across health and care services to meet the requirements of the Children and Young People (Scotland) Act 2014.</p>

Background

The wider policy context and case for the Bill is set out in more detail in the Policy Memorandum published alongside the Bill. The Bill should be read in conjunction with its accompanying documents (Policy Memorandum, Delegated Powers Memorandum, Explanatory Notes and Financial Memorandum).^{1 2 3}

Provision of high quality care requires the right people, in the right place, with the right skills at the right time to ensure the best health and care outcomes for service users and people experiencing care. The Health and Care (Staffing) (Scotland) Bill aims to provide a statutory basis for the provision of appropriate staffing in Health Boards and care service settings thereby enabling safe and high quality care and improved outcomes for service users.

Care services are those who are required to register with the Care Inspectorate and include support services, care home services, school care accommodation services, nurse agencies, child care agency, secure accommodation services, offender accommodation services, adoption services, fostering services, adult placement services, child minding, day care of children and housing support services. Services for children and young people would therefore be included in the Bill.

The policy intention of the Scottish Ministers is to enable a rigorous, evidence-based approach to decision making relating to staffing requirements that ensures safe and effective staffing, takes account of service users' health and care needs and professional judgement, and promotes a safe environment for service users and staff.

The Bill provides the legislative framework which will support decision making relating to staffing requirements. This framework puts the existing Nursing and Midwifery Workload and Workforce Planning tools and methodology on a statutory footing and supports the creation of new tools in NHS health care settings and adult care homes in care settings.

The Bill builds on existing measures to ensure safe and high quality care and to support and sustain the health and care workforce and takes a further important step by creating a

1

[http://www.parliament.scot/Health%20and%20Care%20\(Staffing\)%20\(Scotland\)%20Bill/SPBill31PMS052018.pdf](http://www.parliament.scot/Health%20and%20Care%20(Staffing)%20(Scotland)%20Bill/SPBill31PMS052018.pdf)

2

[http://www.parliament.scot/Health%20and%20Care%20\(Staffing\)%20\(Scotland\)%20Bill/SPBill31ENS052018.pdf](http://www.parliament.scot/Health%20and%20Care%20(Staffing)%20(Scotland)%20Bill/SPBill31ENS052018.pdf)

3

[http://www.parliament.scot/Health%20and%20Care%20\(Staffing\)%20\(Scotland\)%20Bill/SPBill31DPM S052018.pdf](http://www.parliament.scot/Health%20and%20Care%20(Staffing)%20(Scotland)%20Bill/SPBill31DPM S052018.pdf)

coherent legislative framework regarding appropriate staffing across health and care services. In particular, the Bill builds on the existing requirements for care service providers to ensure appropriate staffing.

The Bill requires Health Boards and care services to apply a general duty to ensure they have appropriate numbers of suitably qualified and competent staff. When carrying out this duty providers must consider a set of guiding principles. The principles include taking into account the particular needs, abilities, characteristics and circumstances of different service users, respecting the dignity and rights of service users and taking account of the views of service users.

For certain types of health care, the Bill also sets out a more detailed process, including the use of a common staffing method, which Health Boards must follow when deciding on staffing. This includes health care provided to children and young people who are paediatric inpatients, and through community nursing (which includes health visitors and school nurses) as well as those receiving care which falls under the other specified settings, such as emergency medicine care.

Application of the common staffing method for children's services in Health Boards will provide further evidence and support identification of risk, provision of clinical advice and ensure transparent decision making in relation to staffing requirements

The Care Inspectorate, in collaboration with organisations they consider to be representative of the providers and users of adult care homes in the first instance, is given the power to develop staffing level tools and methodologies, although there is provision to allow this to be extended in the future, potentially into care services for children and young people.

Meeting the objectives of this Bill will provide assurance, including for staff and service users, that appropriate staffing is in place to enable the provision of safe and high quality care, irrespective of Health Board or care service setting.

The Bill will contribute in particular to the Scottish Government's ambitions that our public services are high quality, continually improving, efficient and responsible to local people's needs.

The Bill's provisions closely align with the National Performance Framework's purpose, values and the following national outcomes:

	<ul style="list-style-type: none"> ○ We are healthy and active; ○ We grow up loved, safe and respected so that we realise our full potential; ○ We are well educated, skilled and able to contribute to society ○ We have thriving and innovative businesses, with quality jobs and fair work for everyone; ○ We respect, protect and fulfil human rights and live free from discrimination;
<p>Scope of the CRWIA</p>	<p>The proposals were developed and their likely effect assessed using a range of evidence, including two public consultations, a number of stakeholder events, and input from a Strategic Programme Board and Bill Reference Group set up to support the legislation.</p> <p>The provisions have been examined against both the United Nations Convention on the Rights of the Child (UNCRC) and the Scottish Government’s Wellbeing Indicators.</p> <p>The CRWIA should be read in conjunction with the other impact assessments conducted for the Bill. Equality Impact Assessment (EQIA) considers the potential impact of the Bill’s provisions on each of the protected characteristics, including the impact on children and young people.</p>
<p>Children and young people’s views and experiences</p>	<p>Early consultations were held with the following areas of the Scottish Government with policy responsibility for children and young people:</p> <ul style="list-style-type: none"> ● Office of the Chief Social Work Advisor ● Directorate for Children and Families ● Education ● Equalities Unit ● Justice. <p>These discussions ensured that the development of the Bill’s provisions aligned with current policy.</p> <p>A range of stakeholders from across health and care settings responded to both the public consultations the Scottish Government conducted on the Bill⁴⁵. A number of these stakeholders represented those providing services to children and young people, as well as adults, and no issues specifically relating to children and young people were raised.</p>

⁴ <https://beta.gov.scot/publications/safe-effective-staffing-health-social-care/>

⁵ <https://consult.gov.scot/nursing-and-midwifery/discussion-document-to-support-further-engagement/>

	<p>Analysis of responses to both consultations has been published⁶⁷. A discussion took place with representatives of the Scottish Youth Parliament.</p> <p>Given the focus of the Bill is on staff governance and decision making we have primarily engaged with staff representatives and professional bodies. However, once implemented, the Bill requires the views of service users to be taken into consideration when taking decisions on staffing levels. This is set out in the guiding principles and as part of the common staffing method to be used by Health Boards. This would include consideration of the views of children and young people.</p> <p>In addition, the development of new staffing level tools and methodologies will be led by the relevant professionals, and any future development which would cover services provided to children and young people must take into account the needs of children and young people.</p>
<p>Key Findings</p>	<p>Children and young people who access health and care services provided by Health Boards and registered care service providers will be affected. There are currently staffing level tools in place for children's services provided by Health Boards including midwifery services, health visiting, paediatric wards, school nursing and community children's services. The Bill will strengthen the approach already in place in these areas by ensuring information from staffing level tools, local context, professional judgement, quality measures and the opinions of staff and patients are taken account of when making transparent decisions relating to staffing requirements.</p> <p>The main UNCRC articles which the Health and Care (Staffing) (Scotland) Bill relates to are:</p> <p>Article 6 The right to life. Governments must do all they can to ensure that children survive and develop to their full potential.</p> <p>Article 12 The right to express their views, feelings and wishes in all matters affecting them, and to have their views considered and taken seriously. This right applies at all times.</p> <p>Article 13 Freedom to express their thoughts and opinions and to access all kinds of information, as long as it is within the law.</p>

⁶ <http://www.gov.scot/Publications/2017/12/5851>

⁷ <http://www.gov.scot/Publications/2018/05/6645>

Article 23 Disabled children have the right to live a full and decent life with dignity and, as far as possible, independence and to play an active part in the community. Governments must do all they can to support disabled children and their families.

Article 24 The right to the best possible health. Governments must provide good quality health care, clean water, nutritious food and a clean environment and education on health and well-being so that children can stay healthy.

Article 25 Children placed away from home for the purpose of care or protection (for example with a foster family or in hospital) have the right to a regular review of their treatment and the way they are cared for and their wider circumstances.

The Bill will impact positively on all eight of the wellbeing indicators:

- **Safe**
- **Healthy**
- **Achieving**
- **Nurtured Active**
- **Respected**
- **Responsible**
- **Included**

The Scottish Government considers that the Health and Care (Staffing) (Scotland) Bill will have a positive impact on these articles and indicators for all children using health and care services provided by Health Boards and care service providers by ensuring appropriate staffing is in place across these services to meet the needs of the population, including children's services, and provide high quality care. Ensuring robust evidence based workload and workforce planning and that the appropriate workforce is in place will support professionals across health and care services to meet the requirements of the Children and Young People (Scotland) Act 2014.

Evidence on the exact numbers of children and young people using health and care services is hard to obtain, but it is reasonable to assume that most children and young people will use services provided by Health Boards and care service providers at some point – for example, health visiting is a universal service offered to all under 5s and midwifery and neonatal services. This positive impact on the health and wellbeing of children and young people therefore has the potential to benefit most children and young people in Scotland.

<p>Conclusions and Recommendations</p>	<p>The Scottish Government considers that none of the proposals in the Bill infringe upon the rights of the Child as set out in the Articles of the UNCRC or the indicators of wellbeing (SHANARRI) and that the Bill will not have a negative impact on children and young people.</p> <p>The Health and Care (Staffing) (Scotland) Bill is compatible with, and complementary to the intentions of the UNCRC and meets the recommendations outlined.</p> <p>The Health and Care (Staffing) (Scotland) Bill supports the wellbeing of children and young people as defined in the Children and Young People (Scotland) 2014 Act.</p> <p>The Scottish Government considers that any impact would be positive, and that by requiring Health Boards and care service providers to ensure appropriate staffing for the provision of high quality care which meets the needs of service users, all children and young people accessing these services will benefit from the provision of safe and high quality care.</p> <p>As a result of the CRWIA it is concluded that the Scottish Government should proceed with the Health and Care (Staffing) (Scotland) Bill as it will serve to focus the Scottish Government's efforts to provide safe and effective person centred care across health and care services, including those for children and young people. The Scottish Government will continue to consider the rights of children and young people as the Bill is progressed, and during its subsequent implementation, including in the development of any new staffing level tools and method which cover care that might be provided to children and young people.</p>
<p>Monitoring and review</p>	<p>The Scottish Government will develop a comprehensive plan for monitoring and reviewing the Bill's provisions, with information for Health Boards and care service providers being set out in statutory guidance. Organisations' progress in meeting the duties contained in the Bill will be monitored through existing local and national reporting and regulatory mechanisms and through HIS and Care Inspectorate scrutiny processes. Accountability for compliance will sit with organisations, not individuals.</p>

Bill - Clause	Aims of measure	Likely to impact on . . .	Compliance with UNCRC requirements	Contribution to wellbeing indicators
<p>Part 1 sets out the guiding principles for health and care staffing and sets out duties to have regard to these principles in health care and care services, including in the planning and securing of such services.</p>	<p>The guiding principles of health and care staffing are to provide safe and high quality services and that staffing for health care and care services is arranged while:</p> <ul style="list-style-type: none"> • taking account of the particular needs, abilities, characteristics and circumstances of different service users, • respecting the dignity and rights of service users, • taking of the views of staff and service users, • ensuring the wellbeing of staff, • being open with staff and service users about decisions on staffing, and • allocating staff efficiently and effectively. 	<p>These principles will apply across all services provided by Health Boards and care service providers, including children’s services.</p> <p>The importance of viewing children and young people as individuals and ensuring they are fully involved in discussions and decisions regarding their health and care needs will be met through this part of the Bill.</p>	<p>This part of the Bill does not infringe upon any UNCRC Article.</p> <p>The provision of high quality services which take account of service user needs will contribute positively to articles 6 (right to life), 23 (rights of disabled children) and 25 (right to health and provision of quality health care).</p> <p>Taking account of the views of service users will contribute positively to articles 12 (right to express views), 13 (freedom of expression) and 25 (rights of children placed away from home).</p>	<p>This part does not infringe upon any of the indicators.</p> <p>Ensuring appropriate staffing in line with the guiding principles provides the potential for a positive impact on all of the wellbeing indicators.</p>

Bill - Clause	Aims of measure	Likely to impact on . . .	Compliance with UNCRC requirements	Contribution to wellbeing indicators
<p>Part 2 relates to staffing in Health Boards.</p>	<p>This part places a general duty on Health Boards to ensure appropriate levels of staffing for the provision of high quality health care in all health care settings.</p> <p>For specified health care settings, the Bill requires Health Boards to follow a common staffing method, including -</p> <ul style="list-style-type: none"> • the use of speciality specific staffing level tools; • ensuring that consideration of the output from the staffing level tool, professional judgement tool, local context and quality measures underpin and inform decisions about staffing requirements; • ensuring a consistent approach to identification and mitigation of risk, consideration of appropriate clinical advice and the need for redesign opportunities; • ensuring staff are appropriately trained to apply the common staffing method and tools, are engaged in the process and have information relating to staffing decisions fed back to them; and 	<p>All children accessing health services provided by Health Boards will benefit from the general duty and guiding principles.</p> <p>In relation to the common staffing method, the health care settings specified in the Bill include nursing provision for community nursing (which includes midwifery services, neonatal services, health visiting, community children's nursing and school nursing) and paediatric in patients. It also includes other services which children and young people may use such as emergency care. As health visiting is a universal service all pre-school children will potentially benefit</p>	<p>This part of the Bill does not infringe upon any UNCRC Article.</p> <p>The provision of high quality services which take account of service user needs will contribute positively to articles 6 (right to life), 23 (rights of disabled children) and 25 (right to health and provision of quality health care).</p> <p>Taking account of the views of service users will contribute positively to articles 12 (right to express views), 13 (freedom of expression) and 25 (rights of children placed away from home).</p>	<p>This part does not infringe upon any of the indicators.</p> <p>Ensuring robust evidence based staffing decisions will support health care professionals across to meet the requirements of the Children and Young People (Scotland) Act 2014.</p> <p>All wellbeing indicators have the potential to be met. In particular it is likely to have positive impact on the following indicators – safe, healthy, active, nurtured, respected, responsible.</p>

Bill - Clause	Aims of measure	Likely to impact on . . .	Compliance with UNCRC requirements	Contribution to wellbeing indicators
	<p>Health Boards are required to report on how they have met the requirements placed on them by the Bill and provide assurance regarding safe and effecting staffing.</p>	<p>from this approach. Those children requiring health services from school nurses, community children’s nurses and paediatric in patient services will also benefit from this approach, as will those accessing the other specified services, such as emergency care.</p>		
<p>Part 3 relates to staffing in care services.</p>	<p>This part places a general duty on all care service providers to ensure appropriate levels of staffing for the provision of high quality care in all care service settings.</p> <p>This part of the Bill also provides:</p> <ul style="list-style-type: none"> • A power for the Care Inspectorate to work in collaboration with the care sector to develop staffing methods and tools. Initially this will only be for care homes for adults. • A regulation-making power for the 	<p>All children accessing care services provided by care service providers will benefit from the general duty and guiding principles.</p> <p>The decision in the first instance to limit the development of staffing tools and methods to care homes for adults is not aimed at excluding children and</p>	<p>This part of the Bill does not infringe upon any UNCRC Article.</p> <p>All children accessing health services provided by care service providers will benefit from the general duty and guiding principles.</p> <p>The provision of high quality services will contribute positively to articles 6 (right to life),</p>	<p>This part does not infringe upon any of the indicators.</p> <p>Ensuring appropriate staffing in line with the guiding principles provides the potential for positive impact on all the wellbeing indicators.</p>

Bill - Clause	Aims of measure	Likely to impact on . . .	Compliance with UNCRC requirements	Contribution to wellbeing indicators
	<p>Scottish Ministers to enable the Care Inspectorate's power to be extended to other care settings in the future, including care services for children and young people, if the need arises.</p> <ul style="list-style-type: none"> • A regulation-making power for the Scottish Ministers to require care service providers to use a staffing methods developed by the Care Inspectorate. • The ability for Scottish Ministers to issue guidance to care service providers setting out further detail around the duties contained within the Bill. 	<p>other young people or other vulnerable groups. Instead it is intended to implement a phased approach ensuring the testing of the concept and application in care in line with evidence and practice, which if applicable may be extended to other care settings, potentially including those provided for children and young people, through powers within the Bill.</p>	<p>23 (rights of disabled children) and 25 (right to health and provision of quality health care).</p>	
<p>Part 4 contains standard provisions on ancillary powers to make regulations, commencement and short title.</p>	<p>Gives Scottish Ministers a freestanding regulation making power to make any incidental, supplementary, consequential, transitional, transitory or saving provision that they consider appropriate for the purposes of, or in connection with, giving full effect to the Bill.</p>	<p>N/A</p>	<p>N/A</p>	<p>N/A</p>

CRWIA Declaration

Tick relevant section, and complete the form.

CRWIA required**CRWIA not required**

YES

Authorisation**Policy lead**Dawn Sungu, Senior Policy
ManagerSusan Stewart, Senior Nurse
Chief Nursing Officer's
Directorate**Date**

30 August 2018

**Deputy Director or
equivalent**

Diane Murray

Associate Chief Nursing
OfficerChief Nursing Officer
Directorate**Date**

30 August 2018



Scottish Government
Riaghaltas na h-Alba
gov.scot

© Crown copyright 2018

OGL

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit nationalarchives.gov.uk/doc/open-government-licence/version/3 or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: psi@nationalarchives.gsi.gov.uk.

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

This publication is available at www.gov.scot

Any enquiries regarding this publication should be sent to us at
The Scottish Government
St Andrew's House
Edinburgh
EH1 3DG

ISBN: 978-1-78781-185-0 (web only)

Published by The Scottish Government, September 2018

Produced for The Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA
PPDAS464106 (09/18)

W W W . G O V . S C O T