

# Health and Social Care Committee post legislative scrutiny on Nurse Staffing Levels (Wales) Act 2016.

## Written evidence from the Minister for Health and Social Services

27 November 2023

The following written evidence is in direct response to the terms of reference of the Committee's post-legislative scrutiny session.

### **Operation and effectiveness of the Act to date, including its impact on patient outcomes, impact on nurse recruitment and retention, and barriers to compliance with the legislation.**

When considering the *effectiveness* of the Nurse Staffing Levels (Wales) Act 2016 (the Act), we must remind ourselves of what its stated aims were. The Explanatory Memorandum (revised by Kirsty Williams AM in 2016) that accompanied the Bill laid before the National Assembly for Wales set out the following aims of the legislation:

1. *help ensure there is a safe and appropriate level of nurse staffing in all settings where NHS nursing care is provided, allowing nurses the time to care for patients sensitively.;*
2. *strengthen accountability for the safety, quality and efficacy of workforce planning and management,*
3. *help ensure the sustainability of the nursing workforce going forward.*

There is also an implicit fourth aim of improving patient safety.

Starting with the second of those aims, this is arguably where the Act has had the clearest impact. One benefit that was immediately clear when the Act came into force was the shift to a sense of corporate responsibility when it came to nurse staffing levels, but also the empowering of the voice of the nurse at executive level around what staffing levels should be. The statutory basis of the Executive Nurse Directors as the “designated person” has unequivocally altered the dynamic of historically difficult staffing conversations away from what can be *afforded* to what is *appropriate* under the parameters of the Act. As the committee heard in evidence from health boards, accountability around nurse staffing has undoubtedly been strengthened. Although this isn't an especially tangible or quantifiable benefit, its importance cannot be understated.

The first and third aims are intrinsically linked and have suffered from the same fundamental issue presented by the legislation - the lack of any statutory mechanisms within the Act to ensure an increased supply of nursing staff. What we can say with certainty based on health boards' own reporting data is that *funding* of the general nursing workforce in areas where section 25B applies has

increased since it came into force<sup>1</sup> as reflected in the tables below. Following the presentation of data is a brief assessment of what the trends might suggest.

To contextualise the below data, the Act's statutory guidance states that:

*The nurse staffing level is the number of nurses appropriate to provide care to patients that meets all reasonable requirements in the relevant situation. The number of nurses means the number of registered nurses (that being those with a live registration on Sub Parts 1 or 2 of the Nursing and Midwifery Council register). In calculating the nurse staffing level, account can also be taken of nursing duties that are undertaken under the supervision of or delegated to another person by a registered nurse.*

For the purposes of calculating nurse staffing levels, Healthcare Support Workers (HCSWs) are the unregistered members of the workforce to whom nursing duties are delegated by registered nurses (RNs).

**Table 1 – changes in staffing numbers – adult acute medical inpatient/adult acute surgical inpatient wards**

This table shows the number of whole time equivalent (WTE) RNs and HCSWs funded on Wales' adult acute medical and surgical inpatient wards before the relevant provision of the Act came into force (March 2018<sup>2</sup>) and following each mid-year calculation thereafter. The table shows the total numbers and the change from the baseline at March 2018 as a number and as a percentage. A natural data lag caused by the health boards' reporting schedules means that November 2022 is the latest information available. Data from health board reports.

Period	Funded RNs	Funded HCSWs
<b>March 2018</b>	4154	2505.32
<b>Nov 2020</b>	4293.74 (+139.74 / 3.36%)	3099.32 (+597 / 23.86%)
<b>Nov 2021</b>	4213.43 (+59.43 / 1.43%)	3418.11 (+915.79 / 36.6%)
<b>Nov 2022</b>	4208.07 (+54.07 / 1.30%)	3548.47 (+1046.15 / 41.81%)

**Table 2 – changes in skill mix – adult acute medical inpatient/adult acute surgical inpatient wards**

This table shows the changes in the skill mix ratio of WTE RNs to HCSWs on Wales' adult acute medical and surgical inpatient wards before the relevant provision of the Act came into force (March 2018), and following each mid-year calculation thereafter.

Period	RNs	HCSWs
<b>March 2018</b>	62.4%	37.6%
<b>Nov 2020</b>	60.2%	39.8%
<b>Nov 2021</b>	58.3%	42.6%
<b>Nov 2022</b>	54.3%	45.7%

<sup>1</sup> The Act inserted new sections 25A, 25B, 25C, 25D and 25E into the National Health Service (Wales) Act 2006 ("the 2006 Act"). Section 25B came into force on 6 April 2018 by way of the Nurse Staffing Levels (Wales) Act 2016 (Commencement) Order 2016 No. 829 (W. 208) (C. 59).

<sup>2</sup> Section 25B of the 2006 Act came into force on 1 April 2018 by virtue of S.I. 2016/829 (W. 208) (C. 59).

**Table 3 – changes in staffing numbers – paediatric inpatient wards**

This table shows the number of WTE RNs and HCSWs funded on Wales' paediatric inpatient wards before legislation<sup>3</sup> came into force (September 2021), and following each mid-year calculation thereafter. The table shows the total numbers and the change from the baseline at March 2018 as a number and as a percentage. A natural data lag caused by the health boards' reporting schedules means that November 2022 is the latest information available. Data from health board reports.

Period	Funded RNs	Funded HCSWs
September 2021	418.78	89.21
November 2021	460.39 (+41.61 / 9.93%)	112.83 (+23.62 / 26.47%)
November 2022	460.34 (+41.56 / 9.92%)	123.75 (+34.54 / 38.72%)

**Table 4 – changes in skill mix – paediatric inpatient wards**

This table shows the changes in the skill mix ratio of WTE RNs to HCSWs on Wales' paediatric inpatient wards before legislation came into force (September 2021), and following each mid-year calculation thereafter.

Period	RNs	HCSWs
September 2021	82.4%	17.6%
November 2021	80.3%	19.7%
November 2022	78.8%	21.2%

(Due to section 25B only being applied to paediatric wards since October 2021, the assessment below will be based only on adult medical and surgical wards where there is almost 6 years' worth of data.)

**Brief assessment of these trends**

Based on the data following the first set of calculations undertaken under the Act, we see a significant increase in funding for additional RNs and HCSWs on wards where 25B applies.

However, over time, we see the initial gain of +139 WTE RNs decrease to the most recently available figure of +54 WTE which represents a 1.3% increase since section 25B came into force.

Simultaneously, we see the funding for HCSWs increase dramatically over the same period to +1,046 additional WTE at the most recent calculation representing a 41.81% increase. This is also reflected in the change of skill mix ratio seen at table 2.

The other dramatic change we have seen since 2016 is the increase in agency spend as reflected in table 5.

<sup>3</sup> Paediatric inpatient wards, by virtue of the Nurse Staffing Levels (Extension of Situations) (Wales) Regulations 2021 No. 216 (W. 53), were specified as a situation to which the duties under section 25B of the 2006 Act apply and came into force on 1 October 2021

**Table 5 – healthcare agency spend**

Change in total healthcare agency spend and specifically nursing and midwifery agency spent (as a percentage of the total) since 2016. Data from health board LFR3 returns to WG).

<b>Year</b>	<b>Total agency spend</b>	<b>Nursing &amp; midwifery agency spend</b>
<b>2015-16</b>	£133m	£45.8m (34%)
<b>2020-21</b>	£200.7m	£94.4m (47%)
<b>2021-22</b>	£273m	£139.1m (50.9%)
<b>2022-23</b>	£315.7m	£154.7m (49.0%)

Although we would not draw causal conclusions correlating this rise directly to the Act coming into force, it is reasonable to assume that increased staffing demands from the Act's calculations - and agency recruitment being listed as a reasonable step to maintaining nurse staffing levels – will have compounded the issue.

Given the relatively limited sample size, it would be unwise to draw definitive conclusions from the data above. However, taken together, the patterns seen in these data seem reflective of the staffing challenges being faced across the globe and could be interpreted as health boards struggling to recruit substantive RN staff and are relying on agency staff and HCSW staff as a necessity of delivering healthcare.

However, it would be inaccurate to interpret the data as a simple narrative of RNs being substituted with HCSWs. We are aware that approaches to delegation of nursing duties have evolved in recent years which might explain the growth in HCSW numbers. Firstly, senior nurses and team leaders have become more cognisant of the importance of skill mix in the context of the prudent healthcare agenda and delivering effective care efficiently.

Furthermore, the publication of the HCSW skills and career framework in 2015 set out clearer role descriptors and parameters of practice which has promoted more confidence in the delegation of duties to support staff. Covid stress-tested these principles where delegation became necessary at a much higher frequency than usual due to the intensity of the staffing crisis at the height of the pandemic. One Executive Nurse Director of a health board during that period has said that the lived experience and results during that emergency shifted RN staff's perceptions of delegation and confidence in their abilities to do so effectively.

Unfortunately, despite the obvious implication that staffing levels would increase following the introduction of the Act, there is no mechanism within the legislation itself to ensure a sustainable supply of nursing staff. That fact is evident from the text of the Act, but also in the trends seen in the almost 6 years' worth of data above. Wales is facing similar challenges as every other healthcare system, despite having introduced this legislation. Solutions to the fundamental staffing challenges we face are not to be found in the Act, and Welsh Government is actively pursuing all available strategies to improve retention, recruitment, vacancy rates and reduce agency spend.

As for the implicit fourth aim of the Act, it is not possible with any degree of confidence to make definitive claims about the Act's impact on patient safety. Anecdotally, it would be a reasonable assumption that the increased funding for staff – even in instances where it was used to recruit temporary staff – will have had some positive impact on patient safety. However, we can make no quantitative claims correlating changes to specific instances of patient harm to nurse staffing levels since the Act came into force.

We know that health boards have made concerted efforts to reduce such incidents of harm in recent years. The Committee heard from Executive Directors of Nursing on 19 October 2023 that they have seen similar reductions of harm across all health board settings, not just in 25B wards, suggesting a more complex and multi-faceted set of causes than merely nurse staffing levels.

## **Further actions needed to ensure a sustainable supply of nursing staff to meet patient needs and the requirements of the legislation going forward.**

As stated above, as in all developed health care systems around the world, significant action is needed to bolster our healthcare workforce, not just to meet the requirements of the legislation on certain wards, but to ensure a more robust and effective NHS across its entirety.

### **Retention**

The National Workforce Implementation Plan (NWIP) has helped us track progress with key identified priorities through the Strategic Workforce Implementation Board which meets monthly, chaired by the NHS Chief Executive. Our partnership approach has enabled us to overcome barriers over the recent challenging period and ensure delivery in key areas.

As a key action within the NWIP, a retention plan – *Retaining and Valuing Nurses within the NHS in Wales* - was published in September 2023, drawing on findings of the RCN report *Retaining Nurses in the Workforce: What Matters?*. It is one of the first deliverables in the development of a wider National Retention Work Programme and will provide organisations with recommendations and support to address the challenges of nurse retention in Wales. The Plan is intended to supplement and strengthen the work that many organisations are already progressing and is supported by the retention guide and the self-assessment tool.

The Plan is aimed at supporting the retention of nurses employed in NHS Wales organisations. Nurses employed in the wider health and care system would also benefit from the actions in this Plan and it is recommended that their employers consider adopting some of these to improve the retention of their nurses. Many actions are focused on developing the optimal conditions to support staff to stay in the NHS, supported by a National Retention Programme for NHS Wales led by HEIW.

### **Recruitment**

HEIW has launched a refreshed and enhanced attraction and recruitment campaign for NHS Wales with our dental and pharmacy campaigns currently live and an action to create a broader recruitment campaign to reach shortages in professional areas also completed.

Work to modernise NHS recruitment practice is well underway to make sure we recruit as quickly and efficiently as possible without unnecessary bureaucracy and delays. An action to roll out a positive model of health and care joint induction has been completed meeting local need and extending health and care learning.

The NWIP sets out how we will increase the NHS Wales workforce to meet future demand and deal with a worldwide shortage of healthcare workers, including reducing reliance on agency staff.

We have increased our training budget for the ninth year in a row to £281m this year, creating an extra 527 training places, including more than 380 more nurse training places. Since 2017, nurse training places have increased by 54.3% and midwifery training places increased by 41.8%.

We are also committed to encouraging and supporting diversity within the healthcare workforce and promoting the widening access agenda to ensure that those we train are representative of the communities they serve.

### **Agency Spend**

NHS Wales will always need some flexible workforce capacity to ensure we can deliver a safe service at times of extreme pressure, increased activity rates, or to cover sickness absence or more long-term absence such as maternity leave or other planned absence. Filling these gaps with agency workers is not the most effective or preferred approach – but the rise in expenditure to some £325 million last year reflects the very significant levels of pressure and activity in the NHS at the moment.

We have agreed in social partnership to work collectively with Health organisations and unions to drive a collective reduction in Agency spend across Wales and incentivise substantive employment within the NHS in Wales. This will include a range of measures including a revised control framework for expenditure and a range of actions that will be both more cost effective and provide better opportunities for our substantive workforce including more opportunities for flexible working and advanced rostering to improve planning of workforce.

As a result of this collective action, management information provided by health organisations predict a significant reduction in agency spend this year of approximately £50m (15%).

### **Vacancy gap/data**

We have recently met the commitment to publish NHS Wales vacancy data for the directly employed workforce.

Alongside additional investment to increase our homegrown supply of nurses and other healthcare professionals, we are also recruiting international nurses to close the vacancy gap in the short and medium term. 400 international nurses were recruited this year through the first phase of a national programme and plans are being developed for further international recruitment in the next phase. Health boards have also been actively recruiting overseas nurses through a once-for-Wales approach coordinated by NHS Wales Shared Services Partnership. Health boards and trusts actively manage their workforce with regular recruitment when vacancies arise and through their IMTPs, organisations have developed workforce plans to recruit additional staff and to close the vacancy gap.

**The extent to which the Act is ‘future-proof’ and will contribute to ensuring that NHS Wales has the future workforce it needs to deliver effective, patient-centred care that meets the needs of all population groups.**

It is hard to make a case for the Act being future proof. Indeed, one criticism we have heard anecdotally from the service is that even in the 10 years since it was conceived, the healthcare landscape has changed dramatically enough that the legislation feels like it was written in a different era. As mentioned already, the lack of any statutory mechanisms within the Act to ensure an increased supply of nursing staff means it has not aided in combatting the worsening global nurse shortage.

The other widespread criticism of the Act (as referenced by all 9 NHS organisations that responded to the Committee’s consultation in the summer) is that it enshrines into law a uni-professional approach to workforce planning.

There is an explicitly uni-professional approach to staffing coded into the foundations of the legislation. The duties can only be applied to registered nurses and the HCSW staff to whom RNs can delegate nursing duties.

Even in 2014 when the Bill was first tabled, the emerging prudent healthcare agenda and development of our aims to move care out of hospitals into community settings suggested a likely increased need for a multi-professional approach to workforce planning.

The covid pandemic and Wales’ changing demographics and increasing complexity of healthcare needs has expedited the need to address what we have known to be inevitable for some time: that new workforce models must be explored to meet the ever-changing needs of our population and that traditional methods are unlikely to provide solutions to emerging problems.

Health boards are keen to innovate in this space and are finding themselves fundamentally at odds with the uni-professional nature of the legislation, as stated by the Executive Directors of Nursing to Committee on 19 October 2023.

Other countries that have passed staffing legislation since our Act - or are currently considering their own – have differed from our uni-professional approach and have involved all professional bodies and unions from the outset. Scotland’s Health and Care Staffing Act 2019 for example is broader in its duties meaning it can be applied to midwives and medical practitioners as well as nurses.

A subgroup within the All-Wales Nurse Staffing Group was established in August 2023 to assess the impact that the Act has on multi-professional working and conversely the impact that existing, established multi-professional working models might have on health boards’ meeting their duties under the Act. We expect that group to conclude its analysis early in 2024 and hope that it will help inform some solutions to what currently appears to be an unintended hurdle created by the legislation.

## **Progress in developing the evidence base to extend the Act to further settings.**

Extension of section 25B to paediatric inpatient wards in October 2021 was largely possible due to the close similarities between paediatrics and adult medical and surgical situations as they are both ward settings treating physical health conditions and using similar systems. This meant that the tools and processes that were developed for the adult wards took a limited amount of alteration before they could be iteratively tested over a two-year period and applied in paediatrics.

This was not the case with the other three workstreams within the All-Wales Nurse Staffing Programme where project leads (funded by WG) worked with their respective national forums to develop Welsh Levels of Care tools.

Health visiting and district nursing are both community-based rather than ward settings, and mental health services have their own unique challenges of being more multi-disciplinary in nature and having to assess acuity of mental illness as well as physical illness.

Initial working documents of Welsh Levels of Care Tools for all three settings have been produced and are already being used by health boards to inform decision making around staffing as they are inherently useful regardless of any legislation. However, the type of iterative, intensive testing to build an evidence base that took place for the adult and paediatric tools is not currently being undertaken due to a lack of digital platforms to perform the testing, and growing acknowledgement in the system for the need to move away from uni-professional workforce planning.

At the September 2022 Senedd debate on the RCN's petition calling for extension of the Act, the Minister said:

*"...even if such tools were available for every nursing situation, it is inaccurate to suggest that extending section 25B to all those areas would result in giving Wales "the full team of nurses" as the petition puts it..."*

*What the signatories of the petition appear to be declaring is their desire to see the right number of nurses and health care staff in the system to meet the care needs of the people of Wales. That is also my desire, but an undeliverable legislative pledge will not achieve that, and I cannot commit the Welsh Government to that course of action.*

*What will help to achieve that is: good workforce planning and modelling; effective retention and recruitment strategies, including standardised programmes of clinical supervision and preceptorship for our nursing and midwifery staff and international recruitment."*

Appreciating the limited time in a short debate format to present detail, hopefully the rationale for that position is clearer to the Committee upon reading this written evidence. In responding to the terms of reference, the intention of this paper is to broaden the Committee's understanding of the complexities involved in the

healthcare staffing landscape and how the duties under the Act have interacted and impacted on the persistent challenges faced by the NHS. The Minister and Chief Nursing Officer look forward to addressing further questions at their 6 December hearing.