Welsh Parliament
Health and Social Care Committee

Nurse Staffing Levels (Wales) Act 2016:
Post-legislative scrutiny

April 2024

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About the Committee

The Committee was established on 23 June 2021. Its remit can be found at:
www.senedd.wales/SeneddHealth

Current Committee membership:

Committee Chair:
Russell George MS
Welsh Conservatives

Mabon ap Gwynfor MS
Plaid Cymru

Gareth Davies MS
Welsh Conservatives

Sarah Murphy MS
Welsh Labour

Jack Sargeant MS
Welsh Labour

Joyce Watson MS
Welsh Labour

The following Member attended as a substitute during the scrutiny of the Bill:

Vikki Howells MS
Welsh Labour

Contents

Recommendations 5

1. Background 7

Main elements of the Act 8

Our inquiry 8

2. Operation and effectiveness of the Act to date 10

Section 25B and the triangulated approach 13

Section 25A 16

Reporting and digital infrastructure 17

Evaluating the Act 20

Our view 23

3. Workforce 28

Impact of the Act on the workforce 28

Registered nursing associate 31

Costs 32

Our view 35

4. Future of the Act 37

Extending the Act to further settings 37

Is the Act future-proof? 42

Our view 45

Annex 1: List of written evidence 48

Annex 2: List of oral evidence sessions 49

Recommendations

Recommendation 1. The Minister for Health and Social Services should clarify the consequences for non-compliance with sections 25B and C of the Act and consider including provision for this in the NHS Wales Escalation and Intervention Arrangements. .... Page 24

Recommendation 2. The Minister for Health and Social Services should write to us within 6 months of publication of this report to provide an update on progress by health boards in consistently displaying information about nurse staffing levels on wards where section 25B applies. .... Page 25

Recommendation 3. The Minister for Health and Social Services should bring forward clear operational guidance to support the consistent application of section 25A across health boards in Wales. She should report back to us on progress with developing this within 6 months of publication of this report. .... Page 25

Recommendation 4. The Minister for Health and Social Services should commission a mapping of the digital systems involved in complying with the requirements of the Act to enable an honest appraisal of the work that still needs to be done to improve the efficiency and connectivity of those systems, and the timescales for this. This should include consideration of the role of digital technology in enabling nurses to provide better patient care. .... Page 26

Recommendation 5. The Minister for Health and Social Services should commit to undertaking a full and academic review of the Act as soon as the data to support this work is available. .... Page 26

Recommendation 6. The Minister for Health and Social Services should commission a piece of research into the use of the Welsh Levels of Care workforce planning tool to date, including consideration of how Wales compares with the other UK nations in terms of improved nurse staffing levels and patient safety. .... Page 26

Recommendation 7. The Minister for Health and Social Services should provide a written update, within 6 months of publication of this report, on the success of actions to improve nurse recruitment and retention and ensure a sustainable supply of nurses, including reference to international recruitment and the use of agency staff. .... Page 35

Recommendation 8. The Minister for Health and Social Services should:

- confirm that the introduction of the registered nursing associate role will be fully funded, and set out where that funding will come from;
- provide assurance that the role of registered nursing associate will be an addition to the current workforce and not a substitute for registered nurses; and set out the extent to which the Act mitigates the risk of substitution;
- set out how the requirements of the Act will apply to the registered nursing associate role; and
- provide details of any assessment of the risk to patient safety that has been or will be done in all areas where registered nursing associates will be employed. .... Page 36

Recommendation 9. The Minister for Health and Social Services should report back to this Committee within 9 months of publication of this report on the use of the draft Welsh Levels of Care Tools for mental health and health visiting by health boards, providing an evaluation of how they are contributing to the development of a sustainable workforce and improved patient care in this area. .... Page 46

Recommendation 10. The Minister for Health and Social Services should use the All-Wales Nurse Staffing Programme to commission a mapping of the other workforce planning tools that are available, and to develop the principles and guidance to ensure a consistent approach to their application across Wales. .... Page 46

Recommendation 11. The Minister for Health and Social Services should share with the Committee the findings of the All-Wales Nurse Staffing Group's assessment of the impact of the Act on multi-professional working........ Page 47

1. Background

1. In 2016, Wales passed the Nurse Staffing Levels (Wales) Act. The Act was the first in Europe to recognise, in legislation, the link between numbers and skill mix of nursing staff and patient outcomes.

2. The legislation was prompted by concerns about failings in nursing care in the UK, including the report of the Mid Staffordshire NHS Foundation Trust public inquiry and, in Wales, the Trusted to Care report on quality and patient safety at Princess of Wales Hospital and Neath Port Talbot Hospital.

3. Introduced as a Member Bill[1] by Kirsty Williams AM, the stated purpose of the *Safe Nurse Staffing Levels (Wales) Bill*[2] was to require health service bodies to make provision for safe nurse staffing levels, and to ensure that nurses are deployed in sufficient numbers to:

- enable the provision of safe nursing care to patients at all times;
- improve working conditions for nurses and other staff; and
- strengthen accountability for the safety, quality, and efficacy of workforce planning and management.

4. The Act initially required health boards to calculate and maintain appropriate nurse staff levels in adult acute medical and surgical wards.

5. Throughout the development and passage of the legislation, there was a clear intention for this requirement (commonly referred to as 'section 25B') to be extended to other healthcare settings in the future. From October 2021, it has also applied to paediatric wards.

6. Scotland followed Wales with the *Health and Care (Staffing) (Scotland) Act in 2019*, which sets out safe staffing requirements across health and social care services. There is currently no similar legislative provision in England or Northern Ireland.

[1] A 'Member Bill' is a Bill introduced and promoted by an individual Member of the Senedd.
[2] The word 'safe' was removed from the title of the Bill at Stage 2 by a Welsh Government amendment.

Main elements of the Act

7. The Act inserted the following new sections into the NHS (Wales) Act 2006 (the key duties are often referred to by these section numbers):

- 25A: an overarching duty on local health boards and NHS trusts to have regard to the importance of providing sufficient nurses in all settings. This also applies where health boards are commissioning services from a third party. This duty came into force in April 2017.
- 25B: a duty to calculate and maintain nurse staffing levels in specified settings (the 'nurse staffing level' is defined as "the number of nurses appropriate to provide care to patients that meets all reasonable requirements in that situation"[3]). For adult acute medical and surgical wards, this came into force in April 2018. From October 2021, it has also applied to paediatric inpatient wards. This section also makes provision for extending the duty to further settings.
- 25C: sets out the method of calculation for nurse staffing levels.
- 25D: requires the Welsh Government to issue statutory guidance to health boards/trusts about their duties under 25B and 25C.
- 25E: health boards (and trusts where applicable) are required to report to Welsh Government on their compliance with section 25B after a three year period. The Welsh Government must subsequently publish a summary report. The first of these summary reports, for the period April 2018-April 2021, was published in December 2021.

Our inquiry

8. In February 2023, we agreed to carry out post-legislative scrutiny of the *Nurse Staffing Levels (Wales) Act 2016*. This followed a visit to the University of South Wales in December 2022, and a scrutiny session with the Chief Nursing Officer in January 2023.

[3] The number of nurses means the number of registered nurses (i.e. those with a live registration on the Nursing and Midwifery Council register). In calculating the nurse staffing level, account can be taken of nursing duties that are undertaken under the supervision of, or delegated to, another person by a registered nurse. For these purposes, Healthcare Support Workers (HCSWs) are the unregistered members of the workforce to whom nursing duties are delegated by registered nurses

9. As part of our inquiry, we explored four key themes:

- **the operation and effectiveness of the Act to date:** how has the Act impacted on patient outcomes, on nurse recruitment and retention, and barriers to compliance with the legislation.
- **further actions needed:** to ensure a sustainable supply of nursing staff to meet patient needs and requirements of the legislation going forward.
- **progress in developing the evidence base to extend the Act to further settings.**
- **the extent to which the Act is 'future-proof':** whether the Act 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 the population groups.

10. We have:

- issued a written call for evidence between 11 May and 6 July 2023. We received 15 responses;
- held oral evidence sessions with key stakeholders on 19 October 2023;
- heard from the Minister for Health and Social Services and the Chief Nursing Officer for Wales on 6 December 2023.

11. Schedules of oral and written evidence are available at Annexes 1 and 2 respectively.

12. We would like to thank all those who took the time to contribute to our inquiry.

2. Operation and effectiveness of the Act to date

The Act has raised the profile of nursing in Wales, ensuring 'ward-to-board' reporting and oversight.

13. Overall, respondents were supportive of the Act and believed it had provided "nurses at all levels with a voice."[4] We heard that the Act has:

- driven an increase in investment in nursing;
- created a change in culture, with corporate responsibility for nurse staffing and patient safety;
- supported workforce planning;
- raised the profile of the nursing profession with senior NHS management, and empowered senior nursing teams; and
- increased transparency and accountability within health boards.

14. Mind Cymru felt that the Act:

> *"has clearly driven major changes to healthcare in Wales and is leading across Europe in its ambition. It has had clear benefits, notably in the increased onus placed on Health Boards to find a way to meet the requirements of the legislation, and a transparency about what they might need to meet their targets."*[5]

15. Cwm Taf Morgannwg University Health Board (UHB) agreed that the Act had brought about "significant improvements in transparency and accountability within the health board", and said that it also:

> *"empowers senior nursing teams and ward managers by giving them accountability and ownership within a defined framework. This framework supports workforce predictions and decisions regarding staffing levels, which may need to be*

[4] Written evidence, NS4
[5] Written evidence, NS9

> *increased or decreased in response to changes in specialty and acuity."*[6]

16. HEIW told us that the Act had "highlighted that maintaining nurse staffing levels ensures safe care is provided to patients".[7]

17. We heard that, under the Act, there is a more systematic, joined-up approach to setting nurse staffing levels, and a stronger evidence base to support workforce planning. Further, that investment in nursing has increased, and that there has been a change in culture, so there is now 'corporate responsibility' for nurse staffing and patient safety, combined with greater scrutiny and transparency:

> *"(…) too often - we see a very tragic example of harm to the patients, there is an inquiry or some kind of investigation, and blame is apportioned or investigated as to the causes of that harm.*
>
> *But, very often, that centres around the individual incident, and that might be the individual nurse or member of nursing staff (…). But it doesn't incorporate that wider corporate responsibility that we feel should be there. What is the responsibility of the finance director? What is the responsibility of the workforce director? What is the responsibility of the chief executive? I think that's one of the reasons for that legislation, and I think that wider culture change of corporate responsibility for safety has changed."*[8]

18. Whilst there is no similar legislation in place in England, there is NICE guidance on safe nurse staffing for adult acute wards. In its evidence, the University of Southampton suggested that the introduction of NICE's safe staffing guidance has also led to increased accountability for, and investment in, nurse staffing in Trusts in England.[9]

19. Nonetheless, a clear message in oral and written evidence is that the legislative approach taken in Wales has brought significant benefits. On this point, Jennifer Winslade, Executive Director of Nursing at Aneurin Bevan UHB told us:

[6] Written evidence, NS10
[7] Written evidence, NS12
[8] Record of Proceedings (RoP), 19 October 2023, para 17
[9] Written evidence, NS15

> *"I came to Wales 13 months ago from England, and there is no doubt to me, having worked in the English NHS for a very long time, that the Act has had an extremely positive impact on patient outcomes, but also on the sense of well-being and, certainly, the impact on our staff who are nursing on the wards every day."*[10]

20. In contrast, and despite the generally positive comments about the legislation, we heard from several respondents that it has been difficult to demonstrate the impact of the Act on patient outcomes.[11]

21. In HEIW's view:

> *"(…) we wouldn't actually be able to say to you that we've got absolute evidence that [the Act has] made a difference at a strategic, national level. (…)*
>
> *from a national perspective, that evidence isn't there in terms of things like sustainable workforce, attraction, recruitment, retention."*[12]

22. The NHS Confederation told us that other improvements which have been brought in (such as local harm review meetings, increased staff education and the introduction of the Pressure Ulcer Risk Primary or Secondary Evaluation Tool) have meant that "attributing change purely to the introduction of the Act is particularly challenging".[13]

23. Aneurin Bevan UHB felt that the impact of the Act was hard to demonstrate because the "bar set in reporting of metrics is of such a high level very few incidents are reported". It noted that this might change in the future "as a consequence of the new duty of candour whereby moderate harm will be reported going forward".[14]

24. RCN Wales, however, pointed to the established evidence base linking nursing numbers to patient safety, and felt that in term of outcomes for patients:

> *"(…) the central point is that we know that on section 25B wards, there are more nursing staff than there would otherwise have*

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[10] Aneurin Bevan UHB, The Record, 19 October 2023
[11] Written evidence, NS2, NS13, NS14, NS15
[12] RoP, 19 October 2023, para 373
[13] Written evidence, NS13, NS14
[14] Written evidence, NS2

been. Because we know the correlation between not just the number but the skill level of the nursing staff and the risk of patient mortality and patient outcome, we know that patients are safer on those wards. So, that in itself is enough in terms of the beneficial impact of the Act."[15]

Section 25B and the triangulated approach

Section 25B provides for a duty to calculate and maintain nurse staffing levels in specified settings using a triangulated approach.

The three elements of the triangulated approach (as provided for in section 25C) are:

i. use of an evidence-based workforce planning tool to measure patient acuity and generate an estimated appropriate ratio of nurses to patients (the 'Welsh Levels of Care' (WLOC) workforce planning tool);

ii. professional judgment and

iii. nurse-sensitive, quality indicators.

The nurse staffing level is calculated twice a year, following an acuity audit taken in relevant wards during January and June using the WLOC workforce planning tool.

The results of the audit are triangulated with the professional judgement of the senior nurses who know the wards and the patients' levels of need, and with quality indicators that are particularly sensitive to care provided by a nurse.[16]

25. Respondents told us that the 'triangulated approach' to calculating nurse staffing levels is effective, that it provides evidence of patient need and nurse staffing requirements in the wards where section 25B applies, and that it helps to negotiate staffing increases to meet patient need:[17]

"Positively nurses can now raise live red flags if they feel nurse staffing levels are insufficient and that patient care is compromised. The triangulated approach allows the nurse to

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[15] RoP, 19 October 2023, para 14
[16] Indicators should include patient falls, hospital acquired pressure ulcers, medication errors, and complaints. Additional quality indicators that are deemed appropriate for a ward may be considered.
[17] Written evidence, NS1, NS4, NS6

> *use professional judgement which also gives a level of autonomy".*[18]

26. Respondents were generally positive about the WLOC workforce planning tool, with RCN Wales saying that Wales is ahead of the field in developing it:

> *"We haven't shouted about it enough in my view. We have a dataset there about patient acuity that, possibly, nobody else in the world has got. Now, that data and that information has been phenomenal in terms of understanding about patients, understanding about patient care, being able to move things forward. We should be hugely proud of how we've managed to do that, and I believe that building that into other areas, other clinical areas, is the right next step."*[19]

27. The University of Southampton stated:

> *"If a tool leads to a higher registered nurse staffing level, the preponderance of evidence indicates that patient outcomes and quality of care will be improved."*[20]

28. However, they also highlighted the lack of published research into the WLOC tool specifically, noting that a recent systemic review they had carried out had shown little direct evidence of the benefits of using a defined staffing tool like the WLOC tool.[21]

29. We heard that the Act's explicit focus on use of professional judgement empowers nurses, and is a crucial element of the process of setting nurse staffing levels.[22]

30. As regards the quality indicators set out in the statutory guidance, these were generally felt to be appropriate and can help to identify where staffing is inadequate. However, we heard that there can be challenges linking an indicator directly with the nurse staffing level on a particular ward. For example, a pressure sore may have developed in another part of the hospital or care setting, or a decrease in falls may be partly attributable to wider harm reduction work in a

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[18] Written evidence, NS6
[19] RoP, 19 October 2023, paras 59, 61
[20] Written evidence, NS15
[21] Written evidence, NS15
[22] Written evidence, NS1, NS6

health board. As such, we were told that there is a need to see the "patient journey, rather than one focussed arena"[23].

31. Some respondents though, were concerned that the quality indicators, and their reporting requirements, may not be the right ones or be sensitive enough to provide meaningful data that evidences the link between nurse staffing levels and patient outcomes.[24] They suggested that other, research-based indicators should be considered, particularly for further settings where the current indicators may not be the most useful (e.g. in mental health settings).[25]

32. In relation to the bi-annual calculation of the nurse staffing level, some stakeholders reported that the time needed for validation and presentation to the relevant committee or Board means there is little time to test the new staffing level before the next round of re-calculations. Swansea Bay UHB suggested that consideration be given to moving to an annual re-calculation "which would allow any previous changes to be measured and evaluated before the next cycle", with the provision to re-calculate between cycles if needed.[26]

33. In relation to compliance with section 25B, RCN Wales noted that there are established processes for reporting non-compliance set out in the statutory guidance, but felt that these processes were "unclear". It called on the Welsh Government to clarify the consequences for non-compliance with sections 25B and C, and for those sections to be included within the NHS Wales Escalation and Intervention Arrangements.[27]

34. Finally, health boards/trusts must make arrangements to inform patients of the nurse staffing level on each ward where section 25B applies.[28] On this point, Mind Cymru told us that this requirement "gives the patient more agency over their care and protects the right to a specific quality of treatment".[29]

35. In practice, we heard from Directors of Nursing that there is still work to be done in this area, particularly in relation to consistency of displaying information about staffing levels.[30]

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[23] RoP, 19 October 2023, para 311
[24] Written evidence, NS2, NS4, NS7, NS8, NS11
[25] Written evidence, NS2, NS13
[26] Written evidence, NS4, NS10
[27] Written evidence, NS5
[28] See paras 20-25 of the statutory guidance
[29] Written evidence, NS9
[30] RoP, 19 October 2023, paras 201-202

Section 25A

Section 25A provides for an overarching duty on local health boards/trusts to have regard to the importance of providing sufficient nurses in all settings.

36. RCN Wales told us that the overarching duty in section 25A has had a positive impact on patients and nurses by raising the profile of nursing, demonstrating its value and the need for investment in the profession.[31] However, they argued that on-going workforce challenges, specifically regarding recruitment and retention, were "due to the duty of section 25A not being fully realised."[32]

37. RCN Wales further argued that the lack of statutory guidance for implementation of section 25A has led to it being "weakly implemented and without clear guidance on how to ensure compliance", and called for the Welsh Government to develop statutory and operational guidance for this section which would "support workforce planning and allow us to continue to prepare for the extension of 25B.[33]

38. RCN Wales referred to the "few consequences" for health boards as a result of non-compliance with section 25A, and called for Care Inspectorate Wales (CIW) to inspect and report against the compliance of section 25A of the Nurse Staffing Levels (Wales) Act 2016 in care settings where they have a statutory responsibility to regulate and inspect"[34].

39. Other respondents also referred to the lack of guidance for section 25A. We heard that, whilst the statutory guidance which supports the implementation of sections 25B and 25C has helped to ensure a consistent approach across Wales., in contrast, there is less guidance and a lack of clarity around the overarching section 25A duty[35]. Swansea Bay UHB told us that this could result in "ambiguity and different approaches across Wales".[36]

[31] Written evidence, NS5
[32] Written evidence, NS5
[33] Written evidence, NS5, and RoP, 19 October 2023, para 44
[34] Written evidence, NS5
[35] Written evidence, NS3, NS4
[36] Written evidence, NS4, RoP, 19 October 2023, para 87

Reporting and digital infrastructure

Under section 25E of the Act, health boards are required to report to the Welsh Government on their compliance with section 25B after a three year period. The Welsh Government must subsequently publish a summary report. The first Welsh Government summary report was published in December 2021.[37]

40. The All-Wales Nurse Staffing Programme told us that the staffing levels process was "iterative" and that lessons had been learned from the first three-yearly report[38] presented to the Welsh Government. They said:

> *"We've set up a group that has representatives from across NHS Wales and looked at those reports and how we can refine and develop the reporting metrics. So, we have now revised the reporting metrics in line with the duty of candour to include level 3 incidents of moderate harm, and we'll be looking to implement those new reporting metrics, which have now been agreed by the executive nurse directors for Wales and the chief nursing officer, from April 2024.*
>
> *So, in the next reporting cycle we will have a lot more data with a more granular level to be able to look at the impact it's had on nurse staffing levels."*[39]

41. There was a general feeling amongst respondents that digital infrastructure has been "a challenging aspect throughout the process".[40]

42. A number of them highlighted that the necessary ICT infrastructure to support delivery of the Act was not in place when the legislation was implemented, and that "this has impacted on the health boards' ability to be able to capture all the information that they need to be able to demonstrate their position in relation to the reporting requirements of the Act".[41] This was also reflected in the first Welsh Government summary reports.

43. However, we were told that "significant progress" has been made in recent years with the roll-out of an all-Wales, e-rostering/reporting system, 'SafeCare'[42].

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[37] Nurse Staffing Levels (Wales) Act 2016: nurse staffing level reports 2018 to 2021
[38] Required by section 25E
[39] RoP, 19 October 2023, para 312
[40] Written evidence, NS6
[41] Written evidence, NS1, NS2, NS4, NS5, NS6, NS7, NS8, NS11
[42] Written evidence, NS1, NS2, NS4, NS5, NS6, NS7, NS8, NS11

Joanna Doyle, Head of the All-Wales Nurse Staffing Programme, confirmed that the system has now been implemented across all health boards and is "working very effectively."[43]

44. Despite this, we heard that there are "remaining challenges in the extraction of data from the system"[44] On this point, Velindre University NHS Trust said:

> *"A package of data retrieval is still being negotiated and costed, retrieving the data to create meaningful visual metrics is challenging and labour intensive. It would have been helpful if these issues had been ironed out from the outset as we have a system that currently doesn't offer all functionality to make it fully effective."*[45]

45. Further, we were told that it's not just a case of having systems in place; the connectivity of systems also needs to improve.[46] On this point, Ruth Walker, HEIW, told us:

> *"We've got a huge data set of evidence, probably some of the biggest in the UK, if not wider than that. Unfortunately, that data doesn't talk to the roster, doesn't talk to the patient record. (…) if we had a system where these did talk to one another, I would be able to sit here today and provide you with the evidence that, actually, these [the triangulated approach and the nurse staffing levels] do correlate.*
>
> *It would be really helpful, I think, to (…) look at the digital systems and how they connect."*[47]

46. Responding to these points, the All-Wales Nurse Staffing Programme acknowledged that there is still work to be done, and that they are working with DHCW and partners to "explore all possible options to improve data analytical support, digital solutions and informatics systems and processes".[48]

47. Linked to this, HEIW also referenced the need for better capture of workforce data, which they described as the 'Cinderella' of data within the NHS. They told us

[43] RoP, 19 October 2023, para 328
[44] Written evidence, NS6
[45] Written evidence, NS6
[46] RoP, 19 October 2023, paras 151, 351
[47] RoP, 19 October 2023, para 299
[48] RoP, 19 October 2023, para 329

they were working with DHCW and partners to ensure they can capture the data and put it within the national data resource being developed:

> *"We've got data standards for the first time around workforce data. We've got an agreement in terms of the approach that we're going to take to it being part of the national approach and system. We've got a secondary care dashboard that we've never had access to before. So, we're starting to see a lot of things improving around workforce data that we wouldn't have had before (…)."*[49]

48. Additionally, we heard that more could be done to maximise the role of digital technology in enabling nurses and the provision of better patient care. Nicola Williams, Executive Director of Nursing, Velindre University NHS Trust, told us:

> *"We really need to be looking at how we use proper digital infrastructure, how we have digital at the bedside, and at the virtual bedside through mobile devices, which really maximises the time our nurses can spend with patients, rather than with paperwork and trying to follow things through and chase referrals et cetera, which could all be digitally enabled to happen. But that in itself would also help to reduce patient harm and ensure safety."*[50]

49. On this point, the Chief Nursing Officer (CNO) referred to progress with a two-year pilot in neighbourhood district nursing which has involved the roll-out of an e-scheduling system:

> *"It enables nurses on the ground to practically come to a community setting, so a home, see a patient, determine that, 'We put in 15 minutes for your care. Actually, you're going to need an hour because you're sicker than we thought.' They go into their system online, they can put in the details. That system will reallocate their workload through the day to others or move it elsewhere and allow them the time, in an agile and dynamic way, to deliver that care. (…)*

[49] RoP, 19 October 2023, para 426
[50] RoP, 19 October 2023, para 142

> *With that, they've also been able to increase the delegation of care to their healthcare support workers, which means they are truly utilising the team-around-the-patient approach."*[51]

Evaluating the Act

50. We heard from some respondents, including the All-Wales Nurse Staffing Programme[52], about the lack of formal research and evaluation undertaken on the benefits and impact of the Act. On this point, RCN Wales said that an "important step would be for the Welsh Government to commission research into the social, economic, and patient safety impact of the Nurse Staffing Levels (Wales) Act 2016".[53]

51. Similarly, Cardiff and Vale UHB believed:

> *"Research regarding whether the principles that inform the Act has been evidenced and materialised would be informative for the future direction of the Act."*[54]

52. Both Jennifer Winslade, Executive Director of Nursing at Aneurin Bevan UHB and Nicola Williams, Executive Director of Nursing at Velindre University NHS Trust, believed it was important for there to be a formal evaluation of the Act:

> *"That will help us with that question about what is next, therefore, and how we may best develop the Act further to address that multiprofessional approach, and make sure that it's broadened into areas such as community, which we all know are so very important for patients and the population going forward."*[55]

53. HEIW, however, questioned the timing and value of reviewing the legislation following the pandemic, saying:

> *"The disruption caused during the pandemic understandably impacted significantly on the capacity and ability of organisations to implement the legislation."*[56]

[51] RoP, 6 December 2023, para 111
[52] RoP, 19 October 2023, paras 344, 351
[53] Written evidence, NS5
[54] Written evidence, NS8
[55] RoP, 19 October 2023, para 239
[56] Written evidence, NS12

Evidence from the Minister

54. One of the three main stated aims of the Bill when it was introduced into the Senedd was to "*strengthen accountability for the safety, quality and efficacy of workforce planning and management*". In the Minister's view:

> *"(…) 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.*
>
> *Although this isn't an especially tangible or quantifiable benefit, its importance cannot be understated."*[57]

55. Like other witnesses, the Minister identified the "fundamental issue" with the legislation as being "the lack of any statutory mechanisms within the Act to ensure an increased supply of nursing staff". She did, however, state:

> *"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."*[58]

56. On compliance with the Act, the CNO told us that this is monitored through the three-yearly reporting duty under the Act, as well as the annual reporting mechanism at health board level. She said that any non-compliance is provided for in operational guidance produced under the Act. She referred to one example of a health board that had not been compliant with section 25B:

> *"This has gone through the escalation process. The chief nursing officer then wrote a letter setting out quite clearly the*

[57] Written evidence, Minister for Health and Social Services
[58] Written evidence, Minister for Health and Social Services

expectation on that health board to comply with this. They were then escalated to targeted intervention for monitoring and oversight, and they did rectify that situation."[59]

57. She told us that she felt "confident that the reporting on compliance comes through the annual reporting to health boards, and then we pick that up in the three-year reporting as well".[60]

58. In relation to informing patients of the nurse staffing levels on a section 25B ward, the CNO told us that the pandemic had interrupted the "normalised process" of displaying information about staffing levels. She said she had met with executive directors of nursing about it, and had "instructed the All-Wales Nurse Staffing Group to have oversight and monitoring" of it. She confirmed that the process would be normalised "as soon as possible".[61]

59. On section 25A and the calls for stronger guidance, the Minister told us that she did not support the development of statutory guidance for this section. However, she was "interested in seeing operational guidance still being developed". Whilst the CNO did not believe there was a lack of understanding amongst stakeholders about how to implement section 25A, she agreed with the Minister, stating:

"I would fully support that there is a need for operational guidance to support a consistent approach to how 25A is used."[62]

60. In relation to the issues around digital infrastructure, the CNO acknowledged the long-standing problems in this area, but told us that, when reporting on quality indicators:

"(…) in the next three-year reporting period, we will see a much more robust set of data, because we have a standardised approach to the collection of data through Datix Cymru. The utilisation of that data takes us to the next much more nuanced and sophisticated step."[63]

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[59] RoP, 6 December 2023, para 141-143
[60] RoP, 6 December 2023, para 143
[61] RoP, 6 December 2023, para 117-119
[62] RoP, 6 December 2023, para 139
[63] RoP, 6 December 2023, para 96

61. Finally, in response to calls for research into or evaluation of the Act, both the Minister and CNO questioned the timing of any evaluation. The CNO told us:

> *"(…) in order to fully evaluate the Act, we need a robust set of data (…) But there have been a significant amount of data quality challenges in the last six years of implementing the 25B ward areas".*[64]

62. This, she said, would make evaluating the Act at this point a difficult task. She went on to say that,

> *"In terms of a value-for-money perspective, we've got to ask ourselves whether that is the right place, right now, at this point, to invest that money to do a formal evaluation, when we don't have a robust enough data set that will support a full and academic review of the Act."*[65]

63. Specifically on the calls from RCN Wales for research into the social, economic and patient safety impact of the Act, the CNO said:

> *"(…) if there was research that was going to really help this Act to move into a much more new world order (…), the research needs to be in a place where we focus on the team around the patient, really understanding the application of this Act for the multiprofessional workforce (…). Then, I think that would be something that would be fully supportable."*[66]

Our view

64. It is clear from the evidence we heard that, in the areas where it applies, the Act has brought with it significant improvements. It has raised the profile of nurses in the hospital setting, empowering the voice of the nurse at executive level. It has enabled a more systematic, joined-up approach to setting nurse staffing levels, and created a stronger evidence base to support workforce planning. It has also driven an increase in funding for, and investment in, the nursing workforce in the areas where it applies. Significantly, it has also highlighted areas where improvements are needed.

[64] RoP, 6 December 2023, 80
[65] RoP, 6 December 2023, para 80-81
[66] RoP, 6 December 2023, para 84

65. That said, the Act is not a panacea and many challenges persist, most obviously in relation to recruitment and retention of the nursing workforce. We cover this in more detail in the next chapter.

25B and C

66. In relation to sections 25B and C, the Welsh Levels of Care workforce planning tool has provided a huge dataset about patient acuity that was not previously available. This, in turn, has contributed to an increased understanding of patient care, identifying gaps and enabling better long-term workforce planning.

67. As regards the quality indicators, though generally felt to be appropriate, we do wish to draw to the Minister's attention evidence we received questioning whether they are sensitive enough to provide meaningful data that demonstrates the link between nurse staffing levels and patient outcomes. That evidence called for the Minister to give consideration to whether other, research-based indicators should be considered, particularly if the principles of the Act were to be extended into further settings (either by legislative or non-legislative means).

68. We had some limited evidence about the bi-annual calculation of the nurse staffing level, and whether consideration should be given to moving to an annual re-calculation to allow any previous changes to be measured and evaluated before the next cycle. This was not a view supported by all but, for completeness, we wish to draw this evidence to the attention of the Minister.

69. In relation to compliance with sections 25B and C, we note the Chief Nursing Officer's evidence that non-compliance is provided for in guidance produced under the Act. However, one of the main stakeholders in this area, RCN Wales, believes that the process for reporting non-compliance is unclear, and that the consequences for non-compliance with sections 25B and C should be clarified and included in the NHS Wales Escalation and Intervention Arrangements. On this basis, we believe the Minister needs to address this.

Recommendation 1. The Minister for Health and Social Services should clarify the consequences for non-compliance with sections 25B and C of the Act and consider including provision for this in the NHS Wales Escalation and Intervention Arrangements.

70. As regards the requirement to display information about nurse staffing levels on relevant wards, we agree with witnesses that provision of this information is important for both patients and visitors. We note that this is not yet being done in

a consistent manner post-Covid, and we welcome the evidence from the Chief Nursing Officer that a return to normal working is imminent. We would like the Minister to provide us with a written update on progress in due course.

Recommendation 2. The Minister for Health and Social Services should write to us within 6 months of publication of this report to provide an update on progress by health boards in consistently displaying information about nurse staffing levels on wards where section 25B applies.

Section 25A

71. In relation to section 25A, the lack of clear statutory and operational guidance to support this section is the main concern amongst those we heard from. The guidance that accompanies sections 25B and C has ensured a consistent approach to the implementation of those sections by health boards. In contrast, the lack of clarity that we heard about in relation to implementing the overarching duty in section 25A could result in different approaches being taken across Wales.

72. We believe there is merit in the further development of clear guidance to support section 25A of the Act, and that this would support workforce planning and ensure a consistent approach to the application of section 25A. We note that both the Minister and Chief Nursing Officer support the development of operational guidance in this area.

Recommendation 3. The Minister for Health and Social Services should bring forward clear operational guidance to support the consistent application of section 25A across health boards in Wales. She should report back to us on progress with developing this within 6 months of publication of this report

Reporting and digital infrastructure

73. It is clear that there have been a range of digital infrastructure issues that have run alongside the early operation of the Act, and this has restricted the ability of staff to both capture and retrieve relevant data.

74. Whilst this is regrettable, we were pleased to hear that there have been some developments in this area and that, looking ahead, we can expect a more robust set of data in the next reporting period, because of the new standardised approach to data collection.

75. However, we were concerned to hear reports from stakeholders of on-going challenges, particularly relating to extraction of data and connectivity of systems and we believe there is a need to better understand the underlying issues.

Recommendation 4. The Minister for Health and Social Services should commission a mapping of the digital systems involved in complying with the requirements of the Act to enable an honest appraisal of the work that still needs to be done to improve the efficiency and connectivity of those systems, and the timescales for this. This should include consideration of the role of digital technology in enabling nurses to provide better patient care.

Evaluating the Act

76. The Act as a whole has been in force since 2018, and we agree with stakeholders that there is a need to reflect on its operation and effectiveness in order to determine clearly its impact on patient outcomes and workforce, and to enable informed, evidence-based choices to be made about its future direction. There is, however, some question as to the appropriate time for this work to be undertaken, and its extent.

77. We accept the CNO's point that difficulties with data collection over the last six years would make this a difficult exercise to undertake at the current time. However, a more robust data set will become available as part of the next reporting period. We believe that the Minister should commit to evaluating the Act at the earliest opportunity, as soon as the necessary data to support this available.

78. In the meantime, we note the general lack of research into the Welsh Levels of Care tool, and believe there is merit in commissioning a piece of research into the use of the tool to date, and how Wales compares with the UK nations in terms of improved staffing levels and patient safety.

Recommendation 5. The Minister for Health and Social Services should commit to undertaking a full and academic review of the Act as soon as the data to support this work is available.

Recommendation 6. The Minister for Health and Social Services should commission a piece of research into the use of the Welsh Levels of Care workforce planning tool to date, including consideration of how Wales compares with the other UK nations in terms of improved nurse staffing levels and patient safety.

79. We note the CNO's evidence that the All-Wales Nurse Staffing Group is undertaking as assessment of the impact of the Act on multi-professional working. This is discussed in more detail in Chapter 4.

3. Workforce

In the context of a global nursing shortage, legislation won't, in itself, solve the longstanding recruitment and retention challenges. Nursing needs to be seen as an attractive profession to new entrants, and there needs to be a strong focus on retention of existing staff.

80. The 'nurse staffing level' refers to the 'required establishment' and the planned roster. As set out in the statutory guidance, the 'required establishment' equates to the total number of staff to provide sufficient resource to deploy a planned roster (determined using the triangulated method set out in section 25C) that will enable nurses to provide care to patients that meets all reasonable requirements in the relevant situation.[67]

81. Under the Act, a designated person (usually a health board's director of nursing) is responsible for calculating the nurse staffing level. Directors of workforce, finance, and operation are also required to feed into the process.

82. During scrutiny of the Bill in 2015, the lack of existing workforce capacity was overwhelmingly cited as the most significant barrier to the legislation's implementation. The then Health Minister stated, in 2017, that the Act was designed with a long lead-in time to prepare for the workforce planning implications.[68]

Impact of the Act on the workforce

83. Generally, we heard that the Act, and particularly section 25B, has strengthened workforce planning by evidencing where the gaps are and the numbers of nurses actually required. On this point, RCN Wales told us:

[67] An uplift of 26.9% is included to cover staff absences and functions that reduce the time available to care for patients.
[68] Written Assembly Question, WAQ75332 (e), 5/12/2017

> *"If you were to say, prior to the introduction of this law, 'How many nurses does Wales need in the NHS?' the answer would've been guesswork."*[69]

84. However, stakeholders felt that the extent to which the Act is having an impact on nurse recruitment and retention is hard to gauge.[70]

85. Both stakeholders[71] and the Minister referred to the global nursing shortage, saying that that the legislation won't, in itself, solve the longstanding recruitment and retention challenges within the profession:

> *"(…) there is a national and global shortage of nurses and all health boards and trusts are struggling to recruit from a diminishing supply of nurses. There is a legal obligation for us to calculate and take all reasonable steps to maintain the nurse staffing level but this may become more challenging if the supply of registered nurses is not addressed."*[72]

86. HEIW told us that "increased workload, progressively stressful work and staff shortages" are the three most selected reasons for individuals leaving the nursing register. They went on to say that, whilst the Act may support nurse recruitment and retention,

> *"(…) other variables impact on this too, including pay and conditions, organisational leadership and culture, health and wellbeing of the workforce, continual professional development, flexible working etc. This has also been compounded by the lasting effects of the pandemic, the changing health needs of the population and the increase in health service demands."*[73]

87. Stakeholders told us that a "multi-faceted" approach is needed to ensure a sustainable supply of nursing staff going forward. Such an approach would need to include a stronger focus on nurse retention, flexible working, and the development of new roles and pathways into nursing e.g. through 'grow your own'

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[69] RoP, 19 October 2023, para 33
[70] Written evidence, NS3, NS12
[71] Written evidence, NS1, NS6, NS7, NS8, NS10, NS11
[72] Written evidence, NS6
[73] Written evidence, NS12

programmes and apprenticeships.[74] Nursing, we were told, has to be seen as an attractive profession.[75]

88. On this point, HEIW stated that a multi-faceted approach is "at the heart" of its Strategic Nursing Workforce Plan, which is due to be completed by the end of 23/24.

> *"HEIW's focus is on the development and implementation of co-ordinated plans for attraction, recruitment, retention, education and training, workforce transformation, developmental and career opportunities and pathways, and the wellbeing of the workforce. (…) We also recognise that action is needed to address current pay and working conditions, in particular flexible approaches to working, to ensure a sustainable supply of nursing staff."*[76]

89. Specifically on the development of new roles and pathways, we heard from a number of stakeholders about the actions being taken within health boards to ensure a long-term, sustainable supply of nursing staff in their respective areas. These include:

- in-house cadet/apprenticeship programmes to offer a route into health with a level 2 qualification;
- 'the First Five Years' programme, as an extended preceptorship programme, offers a pathway for registered nurses to develop a strong foundation for their subsequent professional careers;
- level 4 certificate – The Certificate in Health Care Studies qualification offers an opportunity for Health Care Support Workers to obtain a Level 4 qualification, allowing HCSWs to become Assistant Practitioners or to access the part time degree at year 2;
- Apprenticeship Academy**:** The programme aims to support the participants to become (mainly) registered nurses whilst remaining in Health Board employment and undertaking increasingly complex support worker roles;

[74] Written evidence, NS3, NS6, NS7, NS12, NS13
[75] Written evidence, NS3, NS8
[76] Written evidence, NS12

- Assistant practitioner role: to provide opportunities to enhance the unregistered workforce.[77]

90. The University of Southampton told us that current shortages in the nursing workforce "must be understood in the context of a longstanding failure of workforce planning across the NHS". They went on to say the one element of this failure has been:

> *"(…) a tendency to make optimistic assumptions about the effect of change in service provision and the potential to address shortages by changes in skill-mix. It is crucial that future workforce planning does not fall into this trap.*
>
> *The registered nursing workforce is highly trained and therefore likely to be flexible to meet (currently unknown) future demands. Less highly trained staff less so. While there may be some scope for meeting current demands for nursing care with inputs from other professional groups this is unlikely to have a major impact on the demand for nurses in most settings.*
>
> *Clearly, robust forecasting of future demand does not rectify the shortfall but at least this will mean that targets realistically reflect what is needed."*[78]

91. They highlighted that, in England, there is evidence of a "downward shift in skill mix", with support staff numbers increasing faster than registered nurses. This, they said, was "despite current research evidence which suggests that substitution of Registered Nurses with less well-trained staff is unlikely to represent an efficient or effective solution to staffing shortages."[79]

Registered nursing associate

92. On 19 January 2024, the Minister announced her intention[80] to introduce a regulated band 4 nursing role for the NHS in Wales, to be known as a Registered Nursing Associate. This mirrors the approach already taken in England where, according to the Minister, the role has been described as the best model of widening access to nursing and provides the opportunity for new, educated

[77] Written evidence, NS7, NS8, NS14
[78] Written evidence, NS15
[79] Written evidence, NS15
[80] This policy change will require legislative amendments to the Nursing and Midwifery Order (2001). These powers are reserved by the UK Government.

members of the nursing workforce to bridge the gap between Health Care Support Workers and Registered Nurses.[81]

93. The Minister's decision follows the work of a Welsh Government commissioned project to explore the options and opportunities to inform a policy position and recommendations for the future of the band 4 nursing workforce across NHS Wales. The Minister stated:

> *"A fundamental outcome of that project confirms that clinical and academic stakeholders across Wales want the band 4 role in nursing to be regulated to provide increased public protection and a reduction in risk, along with consistency in terms of professional and educational standards."*[82]

94. She confirmed that, later this year, she will conduct a public consultation on developing the parameters of practice for the new role.

95. Following the Minister's announcement, RCN Wales wrote to us[83] to say that answers to some key questions around the policy had not been provided by the Minister prior to the announcement, particularly in relation to funding. RCN Wales said that introduction of the new role could be a positive step, as long as it is fully funded and in addition to the current workforce. It argued that the replacement of registered nurses should not be allowed for reasons of patient safety.

96. RCN Wales also called for the Minister to consider, in the interests of patient safety, extending the duties in section 25B of the Nurse Staffing Levels (Wales) Act 2016 to include all areas in which registered nursing associates will be employed, both inside and outside the NHS.

Costs

97. Funding for the nurse staffing level comes from health boards/trusts' revenue allocation, taking into account the actual salary points of staff employed on its wards. RCN Wales acknowledged that there has been a financial cost of implementing and maintaining nurse staff levels due to the need to increase

[81] Written statement by the Welsh Government: *Policy Intent for introduction of a regulated band 4 nursing role for the NHS in Wales, subject to the necessary UK legislative amendments*, 19 January 2024
[82] Written statement by the Welsh Government: *Policy Intent for introduction of a regulated band 4 nursing role for the NHS in Wales, subject to the necessary UK legislative amendments*, 19 January 2024
[83] RCN Wales, 31 January 2024, 12 February 2024

nurse levels. However, they argued that the cost was "necessary for patient safety" and should not be considered to be a burden.[84]

98. On this point, Swansea Bay UHB stated that the significant resource needed to meet the requirements of the Act, both operationally and corporately, "cannot be underestimated". They went on to say:

> *"The Act stipulates that all Section 25B wards on-costs (to cover sickness, annual leave and study) are currently set at 26.9%,*
>
> *is there the opportunity to review these and ensure parity across all services?"*[85]

Evidence from the Minister

99. In her written evidence, the Minister was clear that:

> *"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."*[86]

100. The Minister acknowledged that "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".[87]

101. She, and the Chief Nursing Officer (CNO), told us that there are a number of interventions in place currently to support the growth of the workforce, including measures relating to recruitment and retention. The CNO confirmed that "Wales has grown a record number of nurses, to over 40,127", which she said would enable "some consistent and sustainable changes and improvement for patient care".[88]

102. In relation to retention, the Minister referenced the work being undertaken via the National Workforce Implementation Plan, including a retention plan published in September 2023, which is "aimed at supporting the retention of nurses employed in NHS Wales organisations".[89]

[84] Written evidence, NS5
[85] Written evidence, NS4
[86] Written evidence, Minister for Health and Social Services
[87] Written evidence, Minister for Health and Social Services
[88] RoP, 6 December 2023, para 45
[89] Written evidence, Minister for Health and Social Services

103. In relation to recruitment, she provided details of a refreshed recruitment campaign for NHS Wales, and on training, the Minister told us that this budget had increased and "we are spending £0.25 billion a year on training people for the NHS in Wales".[90] Further, that nurse training workforce places had increased by 54.3 per cent and midwifery training places by 41.8 per cent which, according to the CNO, were the highest commission numbers there have been. She acknowledged that the fill rate does not match the commission numbers, and that more work needs to be done to make the profession attractive again.[91] We heard that "there is no wrong door into the nursing profession in Wales", and that other, non-traditional approaches to growing the workforce were being pursued.

104. The CNO also highlighted the work being done with HEIW in relation to international nursing students, saying that "over 140 international nursing students" had been brought into training places in Wales", saying this was the first time this had been done within the UK.

105. On the costs of implementing the Act, the Minister cited the "dramatic change" seen since 2016 in agency spend, which she noted had risen from £45.8m in 2015-16 to £154.7m in 2022-23. She said that although she would "not draw causal conclusions correlating this rise directly to the Act coming into force", it was reasonable to assume that increased staffing demands from the Act's calculations (including agency recruitment) will have compounded this issue.[92]

106. She made clear her intention to reduce agency spend, saying that the Welsh Government had agreed to work collectively with health organisations and unions to drive a collective reduction in agency spend across Wales and provide incentives for substantive employment within NHS Wales:

> *"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%)."*[93]

107. The Minister also referred to the increase in numbers of, and funding for, Healthcare Support Workers over the same period (2015-2023), saying that "approaches of delegation of nursing duties have evolved in recent years", and that this might explain the growth in this area.[94]

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[90] Written evidence, and RoP, 6 December 2023, para 42
[91] RoP, 6 December 2023, para 46-47
[92] Written evidence, Minister for Health and Social Services
[93] Written evidence, Minister for Health and Social Services
[94] Written evidence, Minister for Health and Social Services

Our view

108. It is clear that the Act has strengthened workforce planning by highlighting where the gaps are in the current workforce and evidencing the number of nurses required to meet the needs of patients. But, in relation to ensuring a long-term, sustainable supply of nurses, there are so many factors that influence the recruitment and retention of nursing staff that legislation can only be a part of the solution, rather than the solution itself.

109. We are, of course, aware that nursing shortages are an international problem, and that a "multi-faceted" approach is needed to tackle this. It is clear that work is being done in this area by the Welsh Government, HEIW and health boards in relation to recruitment, retention and flexible working opportunities, and to develop new roles and pathways into nursing. Most recently, we note the announcement by the Minister that she has signed a memorandum of understanding with the government of Kerala which will form the basis for the recruitment of 250 nurses, doctors and other healthcare professionals into Wales during 2024/25.[95] We appreciate that this work will take time to produce results but, given that the workforce is such a key area, we ask that the Minister writes to us in due course with an update on progress with these actions.

Recommendation 7. The Minister for Health and Social Services should provide a written update, within 6 months of publication of this report, on the success of actions to improve nurse recruitment and retention and ensure a sustainable supply of nurses, including reference to international recruitment and the use of agency staff.

110. More broadly, it will be necessary to ensure that there continues to be the right skill mix of staff for patient safety and care, recognising that registered nurses are highly trained members of the workforce. On this point, we note the Minister's recent announcement about the introduction of the registered nursing associate role in Wales.

111. We wish to draw the Minister's attention to the views of RCN Wales on the new role[96] and, in particular, its questions about funding for the role and whether it will be an addition to the current workforce, and not a substitute for registered nurses. We would like her to address these points in her response to our report,

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[95] Written statement, *Government of Kerala MOU for the placement of health professionals from India to Wales,* 2 March 2024

[96] RCN Wales, 31 January 2024, 12 February 2024

and set out how the requirements of the Act will apply to the registered nursing associate role.

Recommendation 8. The Minister for Health and Social Services should:

- confirm that the introduction of the registered nursing associate role will be fully funded, and set out where that funding will come from;
- provide assurance that the role of registered nursing associate will be an addition to the current workforce and not a substitute for registered nurses; and set out the extent to which the Act mitigates the risk of substitution;
- set out how the requirements of the Act will apply to the registered nursing associate role; and
- provide details of any assessment of the risk to patient safety that has been or will be done in all areas where registered nursing associates will be employed.

4. Future of the Act

Significant work has been undertaken to support extending the Act into further settings, but views about this are mixed. There is a need to consider how the Act should best be used in future to support new and evolving models of multi-professional working.

112. The All Wales Nurse Staffing Programme was established to support NHS Wales to fulfil the requirements of the Nurse Staffing Levels (Wales) Act 2016 and follow a 'Once for Wales' approach. It sits within HEIW, and has five workstreams:

- **adult acute medical and surgical inpatient** - the 25B duty to calculate/maintain nurse staffing levels has applied to adult acute wards since April 2018
- **paediatric inpatient** - the 25B duty to calculate/maintain nurse staffing levels has applied to paediatric wards from October 2021
- **mental health inpatient**
- **health visiting**
- **district nursing**

113. Each workstream works towards developing and testing an evidence based workforce planning tool specific to its area.

114. The All Wales Nursing Staffing Group, with representatives from all NHS Wales organisations and Welsh Government, is the delivery group for the overarching programme.

Extending the Act to further settings

115. Section 25B currently applies to the first of the two workstreams - adult acute medical and surgical wards, and paediatric inpatient wards. Separately, work has been done on developing the evidence base to support nurse staffing in further settings, in particular for mental health inpatient wards, health visiting, and district nursing.

116. Both RCN Wales and Mind Cymru were strong proponents of extending the Act to mental health inpatient wards.[97] Mind Cymru argued that "patients' voices are not as readily listened to as they would be it there was a legislative right to a safe staffing level", and that extending the Act would "establish a duty of care that a patient can expect and staff can aspire towards". They also felt that it would represent a "proactive approach to building a resilient and the right workforce".[98]

117. RCN Wales and Mind Cymru both called on the Welsh Government to set out a timeline for extending section 25B to mental health inpatient settings, with Mind Cymru saying that this should be a key element of the Welsh Government's successor mental health strategy:

> *"A duty to calculate and maintain safe staffing levels in inpatient settings would fundamentally improve the state of mental health care in Wales. (…) Mental health nursing is the second biggest field of pre-registration nursing, with increasing investment from the Welsh government, but the same set of issues keep reappearing, and patients are not receiving the level of care they deserve."*[99]

118. In addition to mental health inpatient wards, RCN Wales recommended that the Welsh Government should outline a timeline for the extension of section 25B to community settings, and build on the existing evidence base to extend section 25B other settings.[100]

119. On this last point, RCN Wales reported concerns that work to extend the Act "does not seem to be gathering the pace that we would like it to"[101]. They stated that the All Wales Nurse Staffing Programme's work to develop the evidence base and relevant tools to support the extension of the Act has been paused, that there has been no official statement from Welsh Government about this, and that it is unclear whether the pause is temporary or permanent.[102]

120. Responding to the RCN's concerns, Lisa Llewelyn from the All-Wales Nurse Staffing Programme confirmed that the programme had not been paused, but

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[97] RCN Wales has previously submitted a petition calling for section 25B of the Act to be extended to all settings where nursing care is provided, starting with community nursing and mental health inpatient wards..
[98] Written evidence, NS9
[99] Written evidence, NS9
[100] Written evidence, NS5
[101] RoP, 19 October 2023, para 41
[102] Written evidence, NS5

has "gone into a transition phase of reviewing where we are".[103] Asked whether it is still the intention to extend section 25B of the Act to these settings, Lisa Llewelyn told us: "that is something that, obviously, Welsh Government is considering".[104]

121. Not all respondents were supportive of extending the Act. Cardiff and Vale UHB said they did not support extending the Act under the current uni-professional principles, and Powys Teaching Health Board said there is currently insufficient evidence to support its extension to further settings.[105]

122. Some stakeholders, including HEIW, highlighted that further work is needed to test national tools and strengthen the evidence base that is required to underpin them "to ensure that it contains an objective assessment of added value and impact".[106] On this point, Hywel Dda UHB said:

> *"Work on developing (…) tools for health visiting, district nursing and mental health inpatient wards have been undertaken as part of the national nurse staffing programme. The three respective tools are at different stages of development and there is still work to do to establish the evidence base of their applicability in Welsh clinical settings.*
>
> *The secondments for the dedicated work stream programme leads for Mental Health, District Nursing and Health Visiting came to an end in March 2023 and, although there are plans for work to continue, this will have an impact on the timelines for progressing this work."*[107]

123. We also heard from HEIW that further work is needed to ensure the necessary informatics systems are in place across Wales to support the use of the tools:[108]

> *"Prior to any change to the legislation, the development of a national IT system with digital solutions and data analytical support is needed to ensure the effective and efficient collation and utilisation of data at a local and national level."*[109]

[103] RoP, 19 October 2023, para 261
[104] RoP, 19 October 2023, para 269
[105] Written evidence, NS3, NS8
[106] Written evidence, NS12
[107] Written evidence, NS7
[108] Written evidence, NS11, NS12, NS13
[109] Written evidence, NS12

124. Cwm Taf Morgannwg UHB told us that, whilst work streams for mental health, district nursing, and health visiting are progressing, there has been a “loss of central control” over these different workstreams, “resulting in different-paced approaches across Wales depending on each health board’s priorities”.[110] It felt that:

> *“Expanding the Act to additional areas will require careful consideration of the budgetary implications. (…) It is crucial to periodically review the Act to ensure it remains relevant in the evolving healthcare environment and adaptable to changes in care delivery methods.””*[111]

125. It was also noted that some areas, including critical care units and emergency units, are not currently covered by section 25B but are facing significant pressures and staffing challenges.[112] We heard that “further work would be required to understand the evidence-base for settings which currently do not have a formal workstream as part of the All-Wales Nurse Staffing Programme, such as critical care.”[113]

Evidence from the Minister

126. The Minister told us she was not in favour of extending the Act into different settings:

> *“I think writing a law that says 'You've got to staff in this way—'. If you haven't got the staff, you just can't meet the law. So, I just think you've got to be really practical about how this works, at a time when staffing is challenging.”*[114]

127. In referring to the extension of the Act to paediatric settings, the Minister stated that this had been “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”, meaning that the existing tools and processes required only limited alteration before being applied in the new setting.[115]

[110] Written evidence, NS10
[111] Written evidence, NS10
[112] Written evidence, NS8
[113] Written evidence, NS13
[114] RoP, 6 December 2023, para 100
[115] Written evidence, Minister for Health and Social Services

128. This, she said, was not the case with the other three workstreams:

> *"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.*[116]
>
> *"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."*[117]

129. In her evidence, the Chief Nursing Officer (CNO) set out the timescales involved in testing workforce planning tools. She explained that the tools are developed "from scratch" in Wales, which takes about two years, and regulations are then laid in the Senedd to extend section 25B to each distinct setting. She described this as a "cumbersome approach", saying that that the extension into paediatric settings had taken six years."[118] The CNO felt that there were "different, more pragmatic and agile ways forward, that (…) could encourage the best use of tools", rather than extending the Act.[119]

130. Both the Minister and the CNO referred to draft Welsh Levels of Care Tools for mental health and health visiting that have been produced and are currently being used and tested by health boards under section 25A (the broad overarching duty that enables health boards to use tools in any other setting). The CNO suggested that:

> *"(…) as part of the refreshed work of the all-Wales nurse staffing programme going forward, we could commission a mapping of all such other tools that are available and develop the principles and guidance to ensure that there's a consistent approach across Wales, instead of calling for this long, protracted approach to extension through legislation."*[120]

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[116] Written evidence, Minister for Health and Social Services
[117] Written evidence, Minister for Health and Social Services
[118] RoP, 6 December 2023, para 110
[119] RoP, 6 December 2023, para 110
[120] RoP, 6 December 2023, para 110

131. She referred back to a statement she had made previously on this subject that "an undeliverable legislative pledge" would not achieve the right number of staff in the system to meet the care needs of the people of Wales, but that "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" will help to achieve that.[121]

Is the Act future-proof?

132. The uni-professional focus of the Act was a concern for almost all respondents, with Cardiff and Vale UHB highlighting that:

> *"patients outcomes are not defined by a single profession[122]."*

133. They went on to say that, as such,

> *"(…) the Nurse Staffing Levels (Wales) Act does not lend itself to consider the broader multi-professional team around the patient."[123]*

134. We heard that, whilst the uni-professional nature of the Act hasn't necessarily been a barrier to multi-professional working, there is clearly a need to consider how the Act should best be used in future to support new and evolving models of multi-professional working and the 'team around the patient' model.[124]

> *"As health and care services continue to develop and evolve in response to the changing health and care needs of the Welsh population, the workforce is also transforming and recognising the skills and valuable contribution of others in the multi–professional team to deliver patient centred care.*
>
> *Since the writing and the introduction of the Act, service developments and improvements across the health and social care sector reflect the philosophy of multi-professional working, to ensure care is delivered by the right person with the right skills at the right time.*

[121] Written evidence, Minister for Health and Social Services
[122] Written evidence, NS8
[123] Written evidence, NS8
[124] Written evidence, NS1, NS2, NS3, NS4, NS6, NS7, NS8, NS10, NS11, NS12, NS13

> *As the Act matures, it is important for the sustainability and affordability of the health and care system that a multi-professional and multidisciplinary delivery of service provision is recognised and taken into account."*[125]

135. A number of responses also highlighted the development of Band 4 and other support roles, for example the Assistant Practitioner role, which aren't currently explicitly covered by the Act.[126]

> *"Models that are currently in existence include new roles such as Dietetic Assistants and Rehabilitation Technicians which work alongside nursing roles as well as other highly skilled professionals.*
>
> *The workforce planning template in use currently focuses on uniprofessional legislation and does not fully reflect the multi-professional focus required moving forward."*[127]

136. In contrast, RCN Wales' response focused solely on registered nurses and healthcare support workers under their supervision. RCN Wales argued that the Act did not hinder a multi-professional approach, and that there may be elements of the Act and statutory guidance that could be rolled out across a multi-professional team, for example in relation to use of professional judgement:

> *"(…) there is capacity in the current methodology to allow for an adjustment to the nurse staffing level because of the impact of a more multiprofessional, team-around-the-patient type of approach. Some of that hasn't yet been tested, but there's no reason not to test that."*[128]

137. They went on to say:

> *"I think it's also important to remember that the nursing team are the only team that are there 24 hours a day. (…) [The Act] doesn't hinder multidisciplinary working, but it does ensure safe care during those 24 hours of the day.*

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[125] Written evidence, NS12
[126] Written evidence, NS1, NS2, NS6, NS7, NS8
[127] Written evidence, NS8
[128] RoP, 19 October 2023, para 47

> *Because multidisciplinary working is the additional clinical expertise that comes in as well; each expert has their own role, but, in terms of keeping a ward safe, and outcomes for patients, that's what the safe staffing legislation does."*[129]

138. We also heard evidence of the need for a multi-professional approach to workforce planning. On this point, Gareth Howells, Executive Director of Nursing, Swansea Bay UHB, said:

> *"We have to really be clear about how many therapists and the like we need to support our wards and our in-patient areas. But I've got wards where I know I've got a full [nursing] establishment, but if I haven't got an occupational therapist, I can't discharge anyone."*[130]

Evidence from the Minister

139. In line with other respondents, the Minister also referred to the uni-professional approach taken by the Act, saying that even when the Bill was first introduced in 2014, "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."[131]

140. She confirmed that "whilst there have been some really positive things to come out of this Act", there are alternative models to legislation that "can achieve the outcomes that we're all interested in."[132] She went on to say:

> *"(…) what we're not interested in doing is spending a whole lot of time adjusting the Act, changing the Act, enhancing the Act, because none of those things are simple. Those things take time, they're expensive, they're complicated, and at the moment I think there are other issues in the NHS that need our pressing attention. And if there are alternative mechanisms for us to get there, then I'd rather explore those."*[133]

141. She set out that "new workforce models must be explored" and that "traditional methods are unlikely to provide solutions to emerging problems". She

[129] RoP, 19 October 2023, para 49
[130] RoP, 19 October 2023, para 230
[131] Written evidence, Minister for Health and Social Services
[132] RoP, 6 December 2023, paras 208-209
[133] RoP, 6 December 2023, para 213

felt that "health boards are keen to innovate in this space and are finding themselves fundamentally at odds with the uni-professional nature of the legislation". [134]

142. She informed us:

> *"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."*[135]

Our view

Extending the Act

143. Throughout the development and passage of the Bill, there was a clear intention for the requirements of section 25B to be extended to other healthcare settings in the future. To date, significant work has gone into developing the evidence base to support nurse staffing in further settings, in particular for mental health inpatient wards, health visiting, and district nursing.

144. Despite this, there were mixed views amongst those we heard from about whether the Act should be extended at this time. Two key stakeholders, Mind Cymru and RCN Wales, were both strong advocates for the provisions of the Act to be extended to mental health inpatient settings, arguing that this would "fundamentally improve the state of mental health care in Wales"[136]. Others, however, felt that further work was needed to develop and test the relevant tools, and to ensure the necessary IT systems are in place to support any extension into further settings. The Minister was also clear that she did not support extending the Act at this time.

[134] Written evidence, Minister for Health and Social Services
[135] Written evidence, Minister for Health and Social Services
[136] Written evidence, NS05, NS09

145. Whilst we take on board the views of the Minister and those stakeholders who did not feel the time was right to extend the legislation, it is clear that the Act has delivered benefits in 25B settings, particularly in relation to workforce planning and accountability. As such, we believe that the Welsh Government and partners should continue to work towards applying the principles of the Act into further settings, especially mental health inpatient settings, given the work that has already been done in these areas.

146. Making changes to legislation can be a protracted process, and the Minister has been clear that, rather than extending the Act, she would prefer to pursue other non-legislative approaches to ensuring appropriate nurse staffing levels in those further settings.

147. We note the evidence from the Minister and the Chief Nursing Officer that draft Welsh Levels of Care Tools for mental health and health visiting have been produced and are currently being used and tested by health boards under section 25A. If this is the Minister's preferred approach, we believe it is incumbent on the Welsh Government to demonstrate that enough is being done without the need for further legislation, and to provide evidence of that. If this non-legislative approach to ensuring appropriate levels of nurse staffing does not produce results, we believe the Welsh Government should look again at extending the Act.

Recommendation 9. The Minister for Health and Social Services should report back to this Committee within 9 months of publication of this report on the use of the draft Welsh Levels of Care Tools for mental health and health visiting by health boards, providing an evaluation of how they are contributing to the development of a sustainable workforce and improved patient care in this area.

148. Further, we note the Chief Nursing Officer's offer to use the All-Wales Nurse Staffing Programme to commission a mapping of the other tools that are available, and to develop the principles and guidance to ensure a consistent approach across Wales. We believe this work should be carried out.

Recommendation 10. The Minister for Health and Social Services should use the All-Wales Nurse Staffing Programme to commission a mapping of the other workforce planning tools that are available, and to develop the principles and guidance to ensure a consistent approach to their application across Wales.

Is the Act future proof?

149. Future proofing any legislation can be a challenge, but this is particularly so in a landscape like the National Health Service, which has seen such significant changes, in so many areas, over the last ten years.

150. Since the introduction of the Act, developments and improvements in health and care services mean there is now greater emphasis on multi-professional working, ensuring that care is provided by the right person, with the right skills, at the right time. Most of the stakeholders that we heard from, with the notable exception of RCN Wales, felt that the Act does not lend itself to this approach.

151. We were interested to hear from the Minister about the work of the subgroup within the All-Wales Nurse Staffing Group to assess the impact that the Act has on multi-professional working, and the impact that existing, established multi-professional working models might have on health boards' meeting their duties under the Act. We note that the group is expected to conclude its analysis early in 2024 and we would like to see the results of that work.

Recommendation 11. The Minister for Health and Social Services should share with the Committee the findings of the All-Wales Nurse Staffing Group's assessment of the impact of the Act on multi-professional working.

Annex 1: List of written evidence

The following people and organisations provided written evidence to the Committee. All Consultation responses and additional written information can be viewed on the Committee's website.

Reference	Organisation
NS02	Aneurin Bevan University Health Board
NS03	Powys Teaching Health Board
NS04	Swansea Bay University Health Board
NS05	Royal College of Nursing (RCN) Wales
NS06	Velindre University NHS Trust
NS07	Hywel Dda University Health Board
NS08	Cardiff & Vale University Health Board
NS09	Mind Cymru
NS10	Cwm Taf Morgannwg University Health Board
NS11	An individual
NS12	Health Education and Improvement Wales
NS13	Welsh NHS Confederation
NS14	Betsi Cadwaladr University Health Board
NS15	University of Southampton

Annex 2: List of oral evidence sessions

The following witnesses provided oral evidence to the committee on the dates noted below. Transcripts of all oral evidence sessions can be viewed on the Committee's website.

Date	Name and Organisation
19 October 2023	**Helen Whyley, Director** Royal College of Nursing Wales **Lisa Turnbull, Policy, Parliamentary and Public Affairs Manager** Royal College of Nursing Wales **Jackie Davies, Chair** Royal College of Nursing Wales Board **Jennifer Winslade , Executive Director of Nursing** Aneurin Bevan University Health Board **Gareth Howells, Executive Director of Nursing and Patient Experience** Swansea Bay University Health Board **Nicola Williams, Executive Director of Nursing, Allied Health Professionals and Health Science** Velindre University NHS Trust **Lisa Llewelyn, Director of Nurse and Health Professional Education** Health Education Improvement Wales **Ruth Walker, Associate Director (Nurse Leadership)** Health Education and Improvement Wales **Joanna Doyle, Associate Director/ Head of All Wales Nurse Staffing Programme** **Julie Rogers, Deputy Chief Executive and Director of Workforce and OD** Health Education and Improvement Wales
6 December 2023	**Eluned Morgan MS, Minister for Health and Social Services** Welsh Government **Sue Tranka, Chief Nursing Officer for Wales and Nurse Director of NHS Wales** Welsh Government

Date	Name and Organisation
	Gill Knight, Nursing Officer Safety, Regulation & Service Development Welsh Government