

# Nurse Staffing Levels (Wales) Bill

## Summary of changes at Stage 2

January 2015

This document sets out some of the key changes made to the *Nurse Staffing Levels (Wales) Bill* ("the Bill") during Stage 2 proceedings. During these proceedings the short title of the Bill was amended from *Safe Nurse Staffing Levels (Wales) Bill* to *Nurse Staffing Levels (Wales) Bill*.

## Introduction

In December 2013, Kirsty Williams AM was successful in a legislative ballot and undertook two consultations on her proposals. On 1 December 2014, she introduced her *Safe Nurse Staffing Levels (Wales) Bill* to the Assembly.

The Bill as introduced 'seeks to ensure that nurse staffing levels within the Welsh NHS are sufficient to provide safe, effective and quality nursing care to patients at all times'.

The Explanatory Memorandum (EM) sets out that, in summary, the Bill as introduced:

- places a duty on health service bodies in Wales to have regard to the importance of ensuring an appropriate level of nurse staffing wherever NHS nursing care is provided;
- places a duty on health service bodies to 'take all reasonable steps' to maintain staffing ratios, initially in adult acute wards, for minimum nurse / patient ratios; and minimum nurse / healthcare support workers ratios;

- requires the Welsh Government to develop guidance setting out the methods/process by which the NHS organisations will be expected to determine nurse staffing levels that are locally appropriate and at all times safe. The guidance will apply initially to adult acute wards and will set out the minimum staffing ratios and staff skills mix for these settings;
- seeks to ensure that, when determining nurse staffing levels, certain roles (ward sisters for example) are regarded as supernumerary, and factors such as staff training and development needs and planned/unplanned leave are taken into account;
- places a duty on health service bodies in Wales to monitor their compliance with the safe nurse staffing requirements and to take action where failings occur; and

Kirsty Williams states that the Bill will provide a statutory basis for patients and staff to challenge poor levels of nurse staffing.

## Scrutiny

- The Business Committee remitted the Bill to the Health and Social Care Committee ("the Committee") for scrutiny.
- The Committee made 19 recommendations in its **Stage 1 report** published in May 2015. The Constitutional and Legislative Affairs Committee also published its **report** on the Bill in May. The Assembly agreed the general principles of the Bill in Plenary on 3 June 2015.
- Stage 2 commenced on 4 June 2015 and the Committee met to consider and dispose of amendments on 25 November 2015.
- Further information about the Bill (as introduced) is available in a **Research Service Bill Summary**.



## Amendments agreed at Stage 2

**39 amendments** were tabled; one was subsequently withdrawn. No amendments were tabled at Stage 2 by Kirsty Williams, the Member in charge of the Bill. **All 10 of the amendments tabled by Mark Drakeford AM, Minister for Health and Social Services ('the Minister') were agreed.**

Set out below are some of the key changes made during Stage 2 proceedings (this is not an exhaustive list).

### Duty to maintain safe nurse staffing levels

The majority of the amendments tabled at Stage 2 related to the **duty to maintain safe nurse staffing levels**. The most substantive amendment was **amendment 29** tabled by the Minister and agreed by the Committee. Its effect was to **remove a substantive section of the Bill (as introduced)** and replace it with a new section which in turn would add new sections 25A-E to the *National Health Service (Wales) Act 2006*. References to those section numbers (below) are to the insertions that would be made into that Act, and not to sections of the *Nurse Staffing Levels (Wales) Bill*.

Specifically, **amendment 29**:

- Removed the word 'safe' from the duty to maintain staffing levels. The duty in the Bill as amended at Stage 2 is **'to calculate and take steps to maintain nurse staffing'** when considering the extent of nursing services for its area.
- Changed those to whom this amended duty to 'calculate and take steps to maintain nurse staffing' is applied. The Bill as introduced placed a duty on 'health service bodies' (which included Welsh Ministers). The amended Bill places this duty on Local Health Boards (LHBs) and NHS Trusts. It also defines NHS Trusts to 'mean an NHS Trust all or most of whose hospitals, establishments and facilities are situated in Wales'.

### Settings to which the duty would apply

The Bill as introduced required nurse staffing ratios to be set for adult inpatient wards in acute hospitals. It also included regulation making powers permitting the Welsh Ministers to extend this duty 'to additional settings'. This aspect of the Bill was the subject of much debate during Stage 1 proceedings. In its Stage 1 report, the Committee expressed 'significant concerns' about the exclusion of mental health wards within acute hospitals. It also expressed concerns about the potential unintended consequences of staff being moved from both other wards within acute hospitals and from community hospitals in order to fulfil requirements in adult inpatient wards in acute hospitals.

23 amendments were tabled at Stage 2 by Elin Jones AM, Darren Millar AM, and the Minister. The Minister's amendments (**28 and 29**) were agreed by the Committee. The Minister's amendments clarified that the duty 'to calculate and take steps to maintain nurse staffing' applies to adult acute medical and surgical inpatient wards. It also allows Welsh Ministers to extend the duty to apply to 'other situations'.

Amendments that sought to put additional settings such as mental health wards, community hospital wards and maternity wards on the face of the Bill were not agreed. Both the Member in charge and the Minister argued that insufficient evidence was available at this stage to apply the duty 'to calculate and take steps to maintain nurse staffing' to additional settings at commencement.

### Guidance

**Amendment 29** changed what must be **specified in the guidance** that Welsh Ministers must issue to LHBs and NHS Trusts in respect of the amended duty to calculate and take steps to maintain nurse staffing. The Bill (as introduced) required the guidance to 'specify methods by which health service bodies may comply with the duty'. The Minister's amendment inserted a new section (section 25D) which sets out factors that should be



taken into account when calculating a nurse staffing level and which the 'guidance may set out'.

The Minister's amendment requires Welsh Ministers to consult with a range of bodies, organisations and people likely to be affected by the guidance before issuing it. Darren Millar's **amendment 29Q** means that Welsh Minister's must now consult with the independent health care and care home sectors before issuing guidance. The Minister supported amendment 29Q but stated that a further amendment would be needed at Stage 3 to add 'some additional definitional clarity' to the terms used in amendment 29Q.

### Recruitment, training and workforce planning

All three of these issues were raised in evidence during Stage 1 scrutiny, for example:

- The Committee expressed 'significant concerns, that in the short term' the Bill could result in an increase in the use of agency/bank nursing staff';
- The lack of workforce capacity was overwhelmingly cited as the most significant barrier to the Bill's implementation

The Committee recommended that the Member in charge consider including reference to arrangements for comprehensive workforce planning on the face of the Bill.

Whilst none of the amendments relating to these issues were agreed at Stage 2, the Minister indicated that he supported some amendments in principle:

- The Minister said that while he could not support the exact wording of Elin Jones' **amendment 29AE** relating to the recruitment and training of nurses, he was 'persuaded by some of the arguments' and extended an offer to work with her [...] to come up with an amendment at Stage 3 that would achieve her intentions in a way that we think would be more robust';
- The same offer was also made to Darren Millar in relation to **amendment 29P** which sought to require Welsh Ministers to issue guidance about

the workforce planning required to enable health service bodies to comply with duties in the Bill. The Minister said that the amendment 'could further support existing arrangements and could bring into sharper focus the requirements on health boards and trusts to plan the nursing workforce for the future'.

### Reporting arrangements

**Amendment 32** (tabled by the Minister) removed the section of the Bill which set out the reporting requirements (Section 3). Amended reporting requirements are now set out in section 25E.

This new section 25E places a duty on Local Health Boards and any NHS Trusts to submit a report to Welsh Ministers **every three years** in respect of the amended duty to calculate and take steps to maintain nurse staffing levels. The amendment **removed the duty in the Bill as introduced which required Welsh Ministers to review the operation and effectiveness of the Act** initially within a year and subsequently every two years.

### Indicators of safe nursing

The Bill as introduced required Welsh Ministers to assess the impact of the Act by reference to a set of nine 'indicators of safe nursing' set out on the face of the Bill. **Amendment 32** (tabled by the Minister) removed this requirement. The Bill now requires LHBs and the NHS Trusts to which the amended duty to calculate and take steps to maintain nurse staffing levels applies to set out the impact that not maintaining nurse staffing levels has had on care provided to patients. The Bill specifies that this could be done, for example, by reference to some of the three indicators listed on the face of the Bill (section 25E(1)(b)).

## Commencement

The Minister's **amendments 33 and 34** mean that the Bill comes into force, apart from section 2, when it receives Royal Assent. Section 2 will be brought into force by commencement Order. Both amendments reflect the Health and Social Care and Constitutional and Legislative Affairs Committees' recommendations that the operative provisions cannot be commenced until the guidance is in place.

## Short and long titles of the Bill

**Amendment 35** (tabled by the Minister) removed the word 'safe' from the short title.

**Amendment 38** (tabled by the Minister) amended the long title to remove the word 'safe' and to remove reference to the Welsh Ministers under the umbrella term 'health service bodies'. The long title previously read:

An Act of the National Assembly for Wales to require health service bodies to make provision for safe nurse staffing levels.

The amended Bill now reads:

An Act of the National Assembly for Wales to make provision about Local Health Boards and NHS Trusts in Wales establishing nurse staffing levels.

## Purpose of the Bill

**Amendment 27** tabled by the Minister removed section 1 which set out the purpose of the Bill.

## Next Steps

Stage 3 commenced on 26 November 2015. The Stage 3 Debate has been rescheduled to take place on 3 February 2016. The new deadline for tabling amendments is 18.00 on Wednesday 27 January 2016.

## Further information

For further information on the Bill, please contact the lead responsible clerk **Llinos Madeley** ([SeneddHealth@assembly.wales](mailto:SeneddHealth@assembly.wales)).

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