



Welsh NHS Confederation and NHS Wales Executive Directors of Nursing comments on the Welsh Governments response to the Health and Social Care Committees Nurse Staffing Levels (Wales) Act (2016): post legislative scrutiny recommendations.

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Introduction

1. The Welsh NHS Confederation welcomes the opportunity to provide views in relation to Welsh Governments response to the Health and Social Care Committees Nurse Staffing Levels (Wales) Act (2016): post legislative scrutiny recommendations. Our response has been developed following feedback received from the Executive Directors of Nursing (EDONs). The EDONs represent the Executive Directors of Nursing from all Health Boards, NHS Trusts and Special Health Authorities in Wales.

Overview

2. The EDONs recognise that Welsh Government have accepted in full 9 of the Committees recommendations and accepted in principle 2. A summary of the views of EDONs in respect of each of the Welsh Governments response is detailed below.

Rec. no	Recommendation	WG Accept / Accept in principle/ Reject	WG Response	The EDON View
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	Accept	I am happy to clarify in writing in this response to the committee that which was touched upon in evidence last year. The Nurse Staffing Levels (Wales) Act 2016's ("the 2016 Act") operational guidance is clear on this point: "It is the health boards/trusts at an executive level that are accountable for	The EDONS welcome the alignment of the consequences of organisation non-compliance with sections 25B and C of the Act being aligned with the NHS Oversight and escalation framework.

<p>Escalation and Intervention Arrangements</p>		<p>compliance with the Act. Any instances of non-compliance will be considered under the Joint Escalation and Intervention Arrangements that have been in place since 2014. Under these arrangements, the Welsh Government meets with the Wales Audit Office and Healthcare Inspectorate Wales twice a year to discuss the overall position of each health board/trust. A wide range of information and intelligence is considered to advise on the escalation status, any issues and ensure they are resolved effectively. Non-compliance with a piece of legislation such as the Nurse Staffing Levels (Wales) Act would be considered under these arrangements.” During the committee’s hearings none of the witnesses to whom the duties of the 2016 Act apply reported any lack of clarity around the consequences for non-compliance with the legislation. The Executive Directors of Nursing are very familiar with these escalation processes given their executive responsibilities within their respective organisations. They are also familiar with how these processes would play out in the context of non-compliance with the 2016 Act, because – as I mentioned in my 6 December evidence – they have seen it applied in practice. Lack of compliance with the 2016 Act was cited as one of the reasons Cwm Taf University Health Board was placed into targeted intervention status in 2019. A refreshed NHS Oversight and escalation framework was published in January 2024. It describes the escalation, de-escalation, and intervention process in more detail, building</p>	<p>It is important that the organisation as a whole is held to account in respect of delivery of the Act and that this forms part of routine monitoring and oversight arrangements between NHS bodies and the Welsh Government/ regulators.</p> <p>This could be further strengthened in terms of focus at Integrated Quality, Planning and Delivery (IQPD) and Joint Executive Team (JET) meetings in line with the annual reporting cycles.</p>
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			on the learning from our experiences with Cwm Taf Morgannwg and Betsi Cadwaladr university health boards. This document – in combination with the 2016 Act's operational guidance – contains all the clarity required for health boards/trusts to understand the consequences of non-compliance with the 2016 Act.	
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.	Accept	The chief nursing officer (CNO) has raised this issue with the Executive Directors of Nursing. The reporting subgroup of the All-Wales Nurse Staffing Group (AWNSG) is already working through the detail of the necessary steps to ensure a return to nurse staffing level information being displayed consistently across Wales. I will include more detail about our progress on this action in my follow-up six-month update.	This is an area aligned with Health Board / Trust monitoring and also features as a component of Healthcare Inspectorate Wales and Internal Audit Inspections. This assurance could also be aligned with the IQPD and JET processes.
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	Accept	Developing operational guidance setting out consistent use of a triangulated calculation approach in 25A areas is now a central part of the refreshed work programme for the AllWales Nurse Staffing Programme (AWNSP). There is significant work that will need to be completed to underpin this guidance, but it has already commenced, and I will include detail of the programme's progress in my follow-up six-month update.	The EDONS recognise the work that is required in this area. However, some organisations (not universal) already have mechanisms in place aligning 25A and B area processes in terms of establishment reviews, headroom etc. The EDONS would like to see this as an area of priority to strengthen the implementation of section 25A of the Act and for this to be subsequently aligned with monitoring and oversight arrangements for the NHS.
4.	The Minister for Health and Social Services should commission a mapping of the digital systems involved in complying with the	Accept	As with the above recommendation, this work is already reflected in the AWNSP's refreshed work programme. The programme team has encountered issues recruiting digital expertise in the	This needs to be aligned with Digital Health and Care Wales national priorities and the wider NHS Wales digital ecosystem to facilitate rapid system development and reporting connectivity.

	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		past, and I am aware that the programme manager is exploring potential solutions for employing short-term support to make rapid progress against the digital elements of the work programme. I will include detail on progress against this recommendation in my six-month update.	Enhancing the provision of data and information has been incorporated into the current re-procurement requirements for a once for Wales rostering system.
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.	Accept in Principle	I support the principle of independent evaluation of legislation passed by the Senedd. However, as the CNO set out to the committee in December, it is hard to make an argument for commissioning such evaluation work at this time given the fractured implementation of the 2016 Act, due in part to the disruption caused by the pandemic, and the digital issues that have hampered data capture to date. Such evaluation is only typically commissioned once – we should therefore do this when we have the robust data required to underpin an academically rigorous evaluation. April 2024 marked the beginning of the third three-year reporting period – the first since the Safecare ward management module has been rolled out to all 25B areas. We expect this to result in the capture and analysis of more robust data. The conclusion of this reporting period would present an opportunity to undertake the independent evaluation of the 2016 Act. I have asked the AWSNP to include an action in its work programme to periodically	The EDONS support the timelines detailed by Welsh Government in respect of this academic evaluation and feel strongly that this does need to be undertaken to formally evaluate the impact of the Act.

			review the situation and update the CNO.	
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	Accept in Principle	Research into the implementation of the Welsh Levels of Care tools to date would form a significant component of the legislative evaluation described in recommendation five and would not be commissioned as a separate piece of work. The same barriers described above would also therefore apply to commissioning this type of research at the present time.	The EDONs endorse the Welsh Government position and strongly support this research being undertaken.
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	Accept	I will include details of our progress in these areas in my six-month update.	<p>This is a priority area for the EDONs: The Supply and retention of nurses is critical to having a safe and sustainable nursing workforce and in organisations being able to meet the requirements of the Act.</p> <p>The national commissioning of pre-registration nurse training places in Wales (all disciplines) must be aligned with organisations workforce planning requirements.</p> <p>Currently there is a discrepancy between integrated medium-term plan (IMTP) commissioning requirements, commissioned places and University fill rates.</p> <p>Further growth of alternative routes into pre-registration training (Part time/ Open University / Nursing Associate) are also welcomed.</p>
8.	The Minister for Health and Social Services should: <ul style="list-style-type: none"> confirm that the introduction of the 	Accept	If the registered nursing associate (RNA) role is introduced in Wales, it will be the only band 4 role in our nursing workforce following a	EDONs universally supports the introduction of registered nursing associates (RNA's) in Wales and feel they will compliment the current

	<p>registered nursing associate role will be fully funded, and set out where that funding will come from;</p> <ul style="list-style-type: none"> ▪ 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. 		<p>period of transition. Therefore, the funding currently allocated to the education and training of band 4s would be reallocated to the education and training of RNAs. Phase 2 of the band 4 project work is in its early stages, and over the coming months the subgroups of its programme board will lead on identifying the detail and potential timeline of that funding transfer. The four workstreams are: workforce, legislation, parameters of practice and education, and all four will be making financial considerations in respect of those specific areas. I will include details on this work in my six-month update to you. The CNO and I are very clear on the point of substitution. Over time, the registered band 4 role will be replacing the current band 4 healthcare support worker (HCSW) role, not registered nurses. Registered nurses are an irreplaceably important feature of the workforce, and they will be more effectively supported by registered band 4 colleagues with a higher level of education than current band 4 HCSWs. The primary mitigation against registered nurse substitution will be the development of unequivocally clear parameters of practice which distinguish an RNA from a registered nurse. This document will be developed by the parameters of practice subgroup, with a full consultation on the document to follow.</p> <p>There is additional mitigation – the 2016 Act’s statutory guidance states: “The nurse staffing level is the number of nurses appropriate to provide care to patients that meets all reasonable requirements in the</p>	<p>nursing workforce utilising the Team around the patient approach, enhance patient safety as well as providing an additional route into Nurse training.</p> <p>This programme does need to be fully funded including full funding for organisations / staff for transition programmes.</p>
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		<p>relevant situation. The number of nurses means the number of registered nurses (this being those with a live registration on sub parts 1 or 2 of the Nursing and Midwifery Council (NMC) register)." The RNA would not be on those parts of the NMC register so there will be no blurring of boundaries within the context of the 2016 Act. The requirements of the 2016 Act would apply to an RNA in the same way they currently apply to a HCSW. The statutory guidance states: "In calculating the nurse staffing level, account can also be taken of nursing duties that are undertaken under the supervision of, or delegated to another person by a registered nurse." "Another person" includes the current role of a HCSW, and would include an RNA if introduced. The AWNSG will, as a matter of course, review all templates and guidance and make any necessary adjustments to include specific references to the new role. Questions of patient safety in relation to the introduction of an RNA role are counterintuitive. As referenced above, the RNA would be a replacement role for the currently unregulated band 4 HCSW. As part of the project work that informed my decision to pursue introduction of the RNA in Wales, there was a comprehensive review of literature and clinical, academic professional and trade union opinions. Part of that work was effectively a risk assessment to patient safety of the current model of unregistered, unregulated band 4 HCSWs. The outcome of that investigation was that regulation minimises risks, increases patient safety and enhances</p>	
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			<p>public confidence because of the consistent standards of practice and education, as a result of NMC regulation. According to the literature (and reiterated by academics in Wales), the current absence of regulation is what poses a risk to patient safety, not least due to the enhanced scope of practice of band 4s.</p> <p>Platform 5 in the NMC Standards of Proficiency for the RNA includes improving safety and quality of care. These standards do not exist for the current unregulated band 4 role in Wales. The RNA role is also covered by the NMC Code, which includes a requirement to practise effectively and preserve patient safety. As with registered nurses, RNAs are required to revalidate on a cyclical basis, regularly redemonstrating competency.</p>	
9.	<p>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.</p>	Accept	<p>As raised during the committee's evidence gathering, there are some distinct barriers to the standardised use of the mental health and health visiting WLOC tools at present – the lack of digital platforms to enable data collection. As part of the AWNSP's refreshed programme of work, the programme manager intends to undertake a stock-take audit to gain an understanding of how the draft tools are being used and better understand any barriers. The results will be vital for informing the programme's broader work around standardising triangulated staffing calculations in 25A areas. I will include details in my follow-up six-month update.</p>	<p>The EDONs support the standardisation across all 25A areas.</p> <p>Given the workforce challenges within Mental Health, Health Visiting and Learning Disability Services, the EDONs would like to see these areas prioritised.</p> <p>However, the we should not be developing tools for use in Wales, rather we should use UK available tools. The outcomes need to be directly aligned with commissioning requirements.</p>
10.	<p>The Minister for Health and Social Services should use the All-Wales Nurse</p>	Accept	<p>This work is already reflected in the AWNSP's refreshed programme of work. This scoping work will be the first</p>	<p>The EDONs welcome the alignment nationally with workforce planning tools and would like to stress that this</p>

	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		step towards developing operational guidance to ensure a once-for-Wales approach to consistently applying a triangulated calculation approach in all 25A areas, mentioned in recommendation three	has to be multi-professional as patient and population needs cannot be met if workforce planning is done uni-professionally.
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	Accept	When the AWNSG has concluded its work assessing the relationship between the 2016 Act and multi-professional working, I will share its findings/recommendations with the committee.	As detailed above a multi-professional approach is required if patient safety is to be assured in respect of the workforce.

Conclusion

3. Overall, the Welsh Government response is endorsed by the EDONs with some areas, such as monitoring, requiring additional action.
4. The overall areas of priorities align with future nursing workforce supply, ensuring alignment of commissioning with identified workforce planning need as well as multi-professional 'team around the patient' workforce planning.