



Commissioner for **Older People**
for Northern Ireland

22nd August 2024

Safe & Effective Staffing Team
Department of Health
Castle Buildings
Stormont Estate, Belfast, BT4 3SQ
Via email to: StaffingConsultation@health-ni.gov.uk

To whom it may concern,

Re: Safe and Effective Staffing Legislation in Northern Ireland

I am writing on behalf of the Commissioner for Older People for Northern Ireland (COPNI) regarding the consultation on Safe and Effective Staffing Legislation.

The Commissioner welcomes this initiative from the department, which can contribute to improving the safety and wellbeing of staff and services users of health and social care services, and the quality of the care being provided. The department's proposal appears to be an adequate and much needed step to optimise the resources of the health and social care sector of Northern Ireland in the midst of immense financial and demographic challenges.

However, the Commissioner is concerned that the proposals may fall short in terms of protections due largely to the ambiguous language employed in the consultation document. The aim of this response is to highlight the positive aspects of the proposed legislation, and also the possible shortfalls identified by the Commissioner.

The Future of Health and Social Care

Northern Ireland is ageing, which impacts the ability of the health and social care sector to cope with the demand for services required by such an ageing population. The number of people older than 65 will grow rapidly in the following decades. By 2040, the total number of people older than 65 is expected to grow by 38.9% (from 335,449

individuals to 465,905).¹ This will have immediate implications in the cost of care, as older people tend to have poorer general health.²

In addition, the number of people of working age will decrease in the next 15 years, and as a consequence, the number of workers in Northern Ireland is likely to decrease.³ Therefore, the services required by an ageing population, which will be more prone to experiencing bad health and disability, will have to be provided and paid for by a shrinking workforce.⁴

All these circumstances suggest that the HSC will have to deal with a drastic imbalance between supply and demand.⁵ The DoH, in its latest budget, has assessed that these issues are already apparent in Northern Ireland and directly affect the department. The rise in costs is increasing rapidly, while the funds allocated by the Department of Finance do not even meet the cost of current service provision.⁶ All these circumstances raise questions about the future capacity of the health system to take care of an aged population.

The efficient use of resources in the HSC sector must be one of the key strategies to deal with the challenges that our health and social care system is facing at present,

¹ Calculations based on [NISRA 2022 Mid-Year Population Estimates for Northern Ireland](#), and [NISRA 2020-based Interim Population Projections for Northern Ireland](#).

² Census 2021 [Custom table, Age - 4 Categories by Health in General - 3 Categories](#). In addition, estimations show that the number of people with dementia will treble in Northern Ireland (see The Bamford Centre, Ulster University (n.d.) [DFC - Dementia Friendly Communities](#), [Accessed 4th January 2024]) and the cost of dementia care will rise accordingly by 2040 (see Wittenberg, R., Hu, B., Barraza-Araiza, L., Rehill, A. (2019) [Projections of older people with dementia and costs of dementia care in the United Kingdom, 2019–2040](#), Care Policy and Evaluation Centre, London School of Economics and Political Science).

³ The total number of people aged 16-66 is expected to reduce from 1,206,522 individuals (the last available figure of the [NISRA 2022 Mid-Year Population Estimates for Northern Ireland](#)) to 1,177,970 (the number of individuals projected by [NISRA 2020-based Interim Population Projections for Northern Ireland](#)).

⁴ According to the Institute for Fiscal Studies (IFS), the biggest proportion of the UK government revenue in 2023/24 comes from taxes directly paid by the population at work (25% income tax and 16% national insurance). In total, 41% of government revenue comes from taxes directly paid by the population at work, but the contribution of the working population to the total government revenue is indirectly linked to other sources of revenue (VAT, company taxes, capital taxes, etc.). See Institute for Fiscal Studies (2023) [Where does the government get its money?](#).

⁵ The issue of supply and demand is addressed in the consultation document when the previous work being done in Northern Ireland is described. The [Delivering Care: Nurse Staffing Levels in Northern Ireland](#) policy is designed to 'support general and professional managers in clearly demonstrating the need for investment in nurse staffing, within changing service profiles, particularly in response to incremental service growth' (paragraph 3.3). Similarly, the [Social Work Workforce Review](#) acknowledges that currently, 'it is evident that demand is outpacing supply for the social work profession' (paragraph 3.11). See Department of Health (2024) [Safe and Effective Staffing Legislation in Northern Ireland Consultation](#).

⁶ See Department of Health (2024) [Equality Impact Assessment of the 2024-25 Budget Outcome](#).

and that will face with further intensity in the future. Therefore, the focus on efficiency, which is at the heart of the department's proposal, is welcomed by COPNI.⁷ It remains to be seen, however, how the rather ambiguous commitments described in the consultation will be materialised in real terms.⁸

Legislation and policy

Although not exclusively, the core of the consultation document and the proposed legislation focuses on staff numbers. The legislation aims to ensure that there is always sufficient staff available in health and social care settings to attend the needs of service users while maintaining the safety and wellbeing of users and staff.

The document sets out a commitment to ensure that a sufficient number of staff with the "right" knowledge, skills and expertise is available in all care settings, closely reproducing the system set out in the Health and Care (Staffing) (Scotland) Act 2019,⁹ particularly through the use of the Common Staffing Method to calculate the number and type of personnel needed in a given moment and place.¹⁰

However, a legislative commitment to ensure safe staffing levels across the health and social care sector does not guarantee on its own that this goal will be achieved. Despite the fact that early evaluations of the 2019 Scottish Act are not available (since the Act came into force in April 2024 due to delays caused by the Covid-19 pandemic¹¹), a recent report from the Royal College of Nursing has assessed that 'at no point has NHS Scotland employed the number of nursing staff it says it needs to deliver safe care and the registered nurse to resident ratio in many care homes makes

⁷ One of the principles of the safe and staffing legislation is that of the efficiency, not simply about numbers, but 'having the right mix of staff, with the right skills, qualifications, knowledge, and capabilities in the right place, at the right time'. See Department of Health (2024) [Safe and Effective Staffing Legislation in Northern Ireland Consultation](#), paragraph 3.16.

⁸ Examples of this ambiguity are provided in the following section.

⁹ See [Health and Care \(Staffing\) \(Scotland\) Act 2019](#).

¹⁰ 'It is proposed that a statutory duty be placed on the Department of Health and Health and Social Care Trusts to utilise a common staffing calculation tool for nursing and midwifery' (paragraph 4.36); 'it is proposed that a statutory duty is placed on the Department of Health and Health and Social Care Trusts to utilise a common staffing method for nursing, midwifery, and social work' (paragraph 4.37). Department of Health (2024) [Safe and Effective Staffing Legislation in Northern Ireland Consultation](#).

¹¹ See [Health and Care \(Staffing\) \(Scotland\) Act 2019: overview](#).

safe care impossible'.¹² Therefore, the safe staffing levels that the legislation might demand will only be achievable with a sufficient level of funding and through policy reform.¹³

In addition, the language employed in the consultation document to define “Safe and Effective staffing” is vague, particularly with regards to the definitions of “workforce planning”¹⁴ and the “Common Staffing Method”. This ambiguity is problematic if not clarified further in the Bill and through secondary legislation. Without establishing precisely what attainment of a standard means (in this case, effective staffing levels), such standards become ineffective, vacuous and unworkable.¹⁵

The consultation document proposes several statutory duties for the department and health and social care providers, including an obligation on the department to take ‘all reasonable steps’ to ensure that there is a ‘sufficient number’ of registered professionals; and that providers should take ‘all reasonable steps’ to ensure that a number of workers ‘appropriate’ to the health and wellbeing of staff and patients is in place.¹⁶ These expressions (‘all reasonable steps’, a ‘sufficient number’, a ‘number appropriate’, etc.) do not specify targets and ratios that the department and other providers

¹² See Royal College of Nursing (2024, May 15) [RCN Scotland calls for a nursing retention strategy as workforce crisis shows little sign of improvement](#) and Royal College of Nursing (2024) [Nursing Workforce in Scotland 2024](#).

¹³ Regrettably, the DoH acknowledges the need to cut services amid rises in costs and insufficient funds in its latest budget. If these financial limitations were to continue in the future, they would erode any legislative efforts. See Department of Health (2024) [Equality Impact Assessment of the 2024-25 Budget Outcome](#).

¹⁴ ‘The Department acknowledges the importance of the need to workforce plan. Therefore, it is proposed that a legislative requirement is placed on the Department of Health to apply evidence-based strategic workforce planning’ (paragraph 4.25). ‘In addition, it is proposed that employers comprising of Health and Social Care Trusts and health agencies have a legislative requirement to undertake and apply evidence-based operational workforce planning (paragraph 4.21). Department of Health (2024) [Safe and Effective Staffing Legislation in Northern Ireland Consultation](#).

¹⁵ This vagueness was already apparent in existing policy, such as the [Regional HSC Workforce Planning Framework](#), which defines effective workforce planning as ensuring ‘a workforce of the right size, with the right skills, organised in the right way, delivering services to provide the best possible care for patients and clients within available resource’. See Department of Health (2024) [Safe and Effective Staffing Legislation in Northern Ireland Consultation](#), paragraph 4.10.

¹⁶ ‘It is proposed that a statutory duty be placed on the providers of health and care services within Northern Ireland to take all reasonable steps to always ensure that suitably qualified and competent individuals, from such a range of professional disciplines as necessary, are working in such numbers as are appropriate for: the health, wellbeing, and safety of patients; the provision of safe and high-quality health care, and in so far as it affects either of those matters, the wellbeing of staff’ (paragraph 4.41). ‘It is proposed that the Department of Health and Health and Social Care Trusts must take all reasonable steps to ensure that there is a sufficient number of – registered nurses, registered midwives, allied health professionals, social workers, registered care workers, dentists, pharmacists, medical practitioners, and any professional disciplines set out in Appendix 2’ (paragraph 4.43). See Department of Health (2024) [Safe and Effective Staffing Legislation in Northern Ireland Consultation](#).

should maintain. An attempt at addressing this inadequacy is made by the inclusion of the Common Staffing Method to calculate the staff needed in a specific setting. Yet, there remains imprecision and a lack of clarity in this regard:

A “common staffing method” is a process that combines a methodical approach using the assessment of the current or expected workload alongside professional judgement, to make an evidence-based determination of the appropriate staffing complement to deliver an efficient service (paragraph 4.25).

A common staffing method can also consider a range of other factors such as current staffing levels and vacancies, different skills and levels of experience possessed by employees, and local context (paragraph 4.26).¹⁷

Therefore, the department will be expected to take reasonable steps to ensure that enough registered professionals are available, and public providers of health and social care services will be expected to use a calculation method that will give due consideration to “current staffing levels and vacancies”. The reasonable expectation that the department and health and social care providers will try their best is welcomed and necessary. However, without setting any targets, this expectation will not, on its own, introduce meaningful changes to meet the financial and demographic challenges facing our health and social care system.

Conclusion

The greatest issue faced by the health and social care sector in Northern Ireland is demand outpacing supply. In this regard, the greatest concern for the Commissioner for Older People for Northern Ireland in a context of higher competition for health and social care resources, is that older people will be at risk of being left behind. For this reason, this office is attentive to the efforts of the department to increase the safety of patients and the efficiency of the system. For these reasons, COPNI welcomes the initiative from the department to introduce legislation that should contribute to improving health and social care provision. It also welcomes the commitment to place a legislative requirement on health and social care providers to increase monitoring,

¹⁷ See Department of Health (2024) [Safe and Effective Staffing Legislation in Northern Ireland Consultation](#).



**Commissioner for Older People
for Northern Ireland**

transparency, accountability and responsibility, in order to improve the wellbeing and safety of care users and staff.

The proposed legislation is necessary to ensure that minimum standards are respected across the health and social care sector. However, the proposed details of the legislation here presented do not, on their own, set any firm commitments. Without unambiguous targets and ratios in the primary legislation, and without specific long-term planning and funding for implementation, the legislation on its own could only ever deliver minimal improvement.

I would welcome the opportunity to further discuss this matter.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Angel Leira Pernas', written in a cursive style.

**Dr Ángel Leira Pernas
Policy and Research Officer
Commissioner for Older People for Northern Ireland**

angel.leirapernas@copni.org