



Welsh Government

Consultation – summary of response

Nurse Staffing Levels (Wales) Act 2016

Consultation on revised statutory guidance

18 January 2021

Mae'r ddogfen yma hefyd ar gael yn Gymraeg.

This document is also available in Welsh.

Nurse Staffing Levels (Wales) Act 2016 – Consultation on revised Statutory Guidance – Consultation summary report

1. Introduction

2. Overview of responses

3. Responses to the specific consultation questions in the Consultation

- **Q1:** Do you think the ward definitions are suitably clear and easy to understand?
- **Q2:** Is the list of excluded wards at paragraph 30 of the statutory guidance, appropriate?
- **Q3:** Do you have any observations on the general amendments made to the statutory guidance?
- **Q4:** Do you have any related issues that we have not specifically addressed?
- **Q5 and Q6:** What are your views on the effects that the guidance would have on the Welsh language - specifically on opportunities for people to use Welsh and treating the Welsh language no less favourably than English?
- **Q7:** What are your views on the impact the statutory guidance will have on groups of people with protected characteristics – specifically do you think those impacts would be positive or negative?

4. Next steps

1. Introduction

- 1.1 The Nurse Staffing Levels (Wales) Act 2016 received royal assent in March 2016 and had a phased approach to implementation in two parts.
- 1.2 The first duty under Section 25A sets out the overarching responsibility for local health boards and NHS trusts to ensure there are *sufficient nurses to care for patients sensitively* and applies to any setting where nursing care is provided and/or commissioned services. This duty came into force in April 2017.
- 1.3 The second duty under Section 25B (and its associated duties under sections 25C-E) requires Welsh local health boards to use a prescribed methodology to calculate and maintain the nurse staffing level for adult acute medical inpatient wards and adult acute surgical inpatient wards. This duty came into force in April 2018.
- 1.4 At the time that the 2016 Act was passed, a legal reasonable justification for only applying the second duty to adult acute medical and surgical inpatient wards was established. Simply put, those wards were the only situations with an evidence base developed enough to underpin the “*evidence-based workforce planning tool*” which the 2016 Act cites as a necessity for calculating the nurse staffing level.
- 1.5 The *Nurse Staffing Levels (Extension of Situation) (Wales) Regulations 2021* seek to extend the scope of section 25B of the 2016 Act to include paediatric inpatient wards. This follows three years of development on an evidence-based workforce planning tool for that setting which is now considered fit for use.
- 1.6 The Welsh Government’s consultation on the statutory guidance for the Nurse Staffing Levels (Wales) Act 2016 – revised to include paediatric inpatient settings under section 25B - was conducted over a 13 week period, from 16 September to 16 December 2020. This was delayed from the initially planned consultation period in summer 2020 due to the Covid-19 pandemic. The consultation attracted interest from a range of different stakeholders. The consultation documents and revised guidance were published bilingually.
- 1.7 The consultation sought views on the revised statutory guidance, which is required by section 25D of the NHS (Wales) Act 2006. The revisions made to the guidance are intended to support the implementation of section 25B and section 25C of that Act in paediatric inpatient wards.
- 1.8 Those revisions fall under three main headings:
 - the addition of a definition for paediatric inpatient wards and necessary clarifying alterations to the original definitions of adult acute medical and surgical wards;
 - the addition of a list of wards that would be excluded under the paediatric inpatient definition; and
 - additional minor amendments to the original wording of the statutory guidance.

2. Overview of responses

2.1 In total 15 responses to the consultation were received from a range of stakeholders. Nine of these responses were received using the online questionnaire tool. Five responses were received via email having filled in the form template. One response was received in the form of a letter that discussed the consultation themes without responding to the questions directly.

2.2 Seven responses came from health boards, trusts, or affiliated bodies, namely:

- Cwm Taf Morgannwg University Health Board (CTMUHB)
- Hywel Dda University Health Board (H DUHB)
- Swansea Bay University Health Board (SBUHB)
- Health Education and Improvement Cymru (HEIW)
- Public Health Wales (PHW)
- All Wales Paediatric Nursing Working Group
- All Wales Nurse Staffing Group

Six were from organisations with an interest in the health service, namely:

- Children's Commissioner for Wales
- Royal College of Paediatrics and Child Health (RCPCH)
- Board of Community Health Councils in Wales (CHCs)
- All Wales Children and Young People's Forum
- Royal College of Nursing (RCN)
- Healthcare Inspectorate Wales (HIW)

Two responses were from members of the public, one of which was anonymous.

2.3 The respondents were invited to provide feedback on each section of the guidance. A number of respondents provided comments only on particular sections of interest, meaning that there were fewer than 15 responses to a number of the questions.

2.4 The full responses are provided at Annex A of this document (with personal details redacted where respondents expressly stated that they did not want these to be published).

3. Responses to the specific consultation questions in the Consultation

Q1 Ward definitions

- 3.1. Respondents were asked to comment on how clear and easy to understand were the revised definitions for adult medical, adult surgical and paediatric inpatient wards. They were also given the opportunity to make suggestions as to any ways they felt the definitions could be made more clear.
- 3.2. In general, the definitions were felt to be clearly worded and easy to understand: 8 respondents explicitly affirmed this; a single respondent of the 15 suggested that the definitions weren't clear; and the remaining 6 did not explicitly answer the question one way or the other.
- 3.3. Despite the overall agreement of clarity in the definitions, there were several suggestions for modifications made, often by several different respondents. These have been grouped together thematically below.
- 3.4. Five respondents noted that the wording "...patients up to their 18th birthday" would be more clear and easily understood than "0 – 17".
- 3.5. Five respondents noted the complexity of transitioning from paediatric to adult care in the health service, and that there is variation in practice between health boards, especially for those aged 16 and 17 who are often seen as a "grey area" in between. The RCN responded that they welcomed the revised definitions as they reflect the reality of the fluidity of the complex situation described above by the other 5 respondents.
- 3.6. Six respondents noted that in determining the most clinically appropriate setting (a paediatric ward or an adult ward) for a particular patient, more than just professional judgement should factor into the decision-making process. Other suggested factors to be taken into account were: the standardised risk assessment process already in place; the child's right to have a say in their care pathway; and a legal guardian's input.
- 3.7. Three respondents commented that "*under the supervision of a consultant physician or surgeon*" in paragraph 30 should be replaced by something more specific such as a "*consultant paediatrician*" or "*medical or nurse/AHP consultant*".
- 3.8. One respondent (a member of the public) commented that the statutory guidance should be available in an "*Easy Read*" format.
- 3.9. One respondent (a member of the public) used this section to note concerns that the extension of section 25B would be "*...used as an excuse to...*" close Ambulatory Paediatric units in Pembrokeshire.
- 3.10. Two respondents requested clarity on occasions where a patient under the age of 18 would be cared for in a non-paediatric setting – the example given being an adult maternity ward.

Q2 Ward exclusions

- 3.11. Respondents were then asked if they thought the list of ward exclusions under paragraph 30 is appropriate and given the chance suggest any changes they deemed necessary.
- 3.12. In general, the exclusions list was felt to be appropriate: 9 respondents explicitly affirmed this; two respondents of the 15 implicitly suggested the list was not appropriate; and the remaining 4 did not answer the question one way or the other. One of the respondents further commented that the exclusions list was appropriate provided that paragraph 27 of the statutory guidance is also adhered to. This is the paragraph that clarifies the overarching principle that the ward definitions are to be applied according to the "*primary purpose of the ward*".
- 3.13. Four respondents noted that although this exclusions list is appropriate, there could potentially be some uncertainty around applying the list in operational practice due to the fact that some paediatric inpatient wards also contain some clinical assessment unit or day surgery beds staffed by a single team. However of those four, Hywel Dda UHB also noted that paragraph 27's clarification around "*primary purpose of the ward*" would be helpful to health boards in their decision making around the issue. On that point, Hywel Dda also commented that it might be helpful to reiterate the point of "*primary purpose of the ward*" within the definitions and exclusions list paragraphs.
- 3.14. Three respondents noted that the regional specialist plastic and burns units in Swansea Bay UHB should be included in the list of excluded wards.
- 3.15. One respondent (the All Wales Nurse Staffing Group) noted that specialist oncology was included in the exclusions list for paediatrics but not in the existing exclusions lists accompanying the adult medical and surgical ward definitions.
- 3.16. The RCN commented in their response that although the overarching section 25A duty of the Act (the duty to have regard to providing sufficient nurses in all settings where nursing care is provided or commissioned) is set out in paragraph 18, it could be reiterated at the point of the exclusions list as a reminder that despite not falling under the auspices of section 25B, there is still a staffing duty on all of the areas listed.
- 3.17. Two respondents used this section to comment that section 25B of the Act should be applied to all areas of care. One of the two further noted that it wasn't sufficiently clear if the wards listed were excluded due to the specific lack of the necessary evidence-based workforce planning tools stated by the Act as being a requisite for the application of section 25B
- 3.18. One respondent (a member of the public) used this section to again raise concerns about the historic downgrading of the Paediatric Ambulatory Care Unit in Witybush Hospital stating that it should be reinstated as a 24 hour inpatient paediatric ward.

Q3 Other revisions to original guidance

- 3.19. Question 3 gave the opportunity for respondents to give any overarching observations on the revisions that had been made to the statutory guidance. There were only a handful over comments, mostly to do with clarity due to sentence structure or technical issues.
- 3.20. Four respondents noted that there was ambiguity around whether the nurse staffing level constitutes only registered nurses, or also additional staff under the supervision of registered nurses. Paragraph four of the statutory guidance establishes that the latter is true in saying: “*The nurse staffing level is the number of nurses appropriate to provide care to patients that meets all reasonable requirements in the relevant situation. The number of nurses means the number of registered nurses (this being those with a live registration on Sub Parts 1 or 2 of the Nursing and Midwifery Council register). In calculating the nurse staffing level, account can also be taken of nursing duties that are undertaken under the supervision of, or delegated to another person by a registered nurse.*” However, paragraph nine then goes on to unnecessarily repeat the line “*The number of nurses means the number of registered nurses.*” without the accompanying clarification from paragraph four which has been viewed as lacking consistency.
- 3.21. Two respondents highlighted a sentence in paragraph 12 which mentions adult medical and surgical wards but mistakenly omitted reference to paediatric inpatient wards.
- 3.22. Two respondents noted that the section on informing patients of the nurse staffing levels should explicitly state that health boards should inform patients of the planned nurse staffing level and the actual deployed nurse staffing level.
- 3.23. One respondent (CTMUHB) noted that it is “*a shame*” that the regulations cannot come into force earlier than October 2021.
- 3.24. One respondent (RCPCH) used this section to repeat comments about the operational complexity of where children aged 15-17 are treated and the variation in practice across health board areas. They note that the operationalisation of the statutory guidance will need to be “*carefully worked through*”.
- 3.25. One respondent (All Wales CYP forum) commented that paragraph 44 (which discussed nurse-sensitive quality indicators) should include reference to safeguarding and child protection, as well as the “*presence of a parent*”.
- 3.26. The RCN commented that a senior registered children’s nurse must be involved in the decision-making process regarding nurse staffing levels in paediatric inpatient wards.
- 3.27. One respondent (member of the public) used this section to further share concerns about how “*the Act would be used to accelerate the centralisation of services in favoured hospitals*”, namely Withybush Hospital’s paediatric ambulatory care unit.

Q4 Respondent-suggested related issues

- 3.28. Question four gave respondents a chance to raise any related issues not specifically address in the other consultation questions. Four respondents stated that they had no further observations. Of the remaining 11 respondents, there were fewer repetitions of comments as in the previous questions, and a greater number of observations by single respondents.
- 3.29. Five respondents commented on the need to specify between the existing adult *Welsh Levels of Care* workforce planning tool and the newly introduced paediatric *Welsh Levels of Care*. Further, two of those five respondents queried whether references to an *evidence-based workforce planning tool* should be replaced with explicit naming of the *Welsh Levels of Care*.
- 3.30. Four respondents noted that in paragraph 44, the adult quality indicators are explicitly named but that the paediatrics specific ones are not, indicating that the clarification in paragraph 45 (that the designated person may consider *any* other indicator that is sensitive to the nurse staffing level they deem appropriate) may not be clear enough by itself.
- 3.31. Three respondents used this section to highlight the same omission in point 3.21 above.
- 3.32. Three respondents commented that the 26.9% uplift mandated by the legislation does not include maternity cover.
- 3.33. Two respondents highlighted the discrepancy between “*patient’s wellbeing is particularly sensitive to care provided by a nurse*” versus the more concise “*quality indicators*” which is used to represent the same thing in the triangulation graphic.
- 3.34. Two respondents queried whether the word “supervisory” should be used instead of “supernumerary” in paragraph 11.
- 3.35. Two respondents noted that there is no explicit reference to existing nurse staffing levels standards and guidance in our statutory guidance, implying that the clarification at paragraph 39 (“*The professional judgement of the designated person should be informed by consideration of any relevant expert professional nurse staffing guidance, principles, research and current best practice standards.*”) may not be sufficiently clear.
- 3.36. Two respondents commented on the importance of training/continuous professional development and specialist knowledge on providing an appropriate skill mix and effective succession planning, one further noting that the reasonable steps section (beginning at paragraph 13) should include reference to ensuring continuous professional development.
- 3.37. RCN Wales made several comments in this section related to the Act, but not the statutory guidance per se. They were:

- The importance of accountability and transparency in reporting on nurse staffing levels and a recommendation that this remain a priority for the next Welsh Government administration;
- The delaying effect that the Covid19 pandemic had on both the consultation period and of the intended coming-into-force date of the regulations. They “*strongly believe that the Senedd elections and election of a new government should not interfere with the coming-into-force date (, and)... that the date should not be further delayed without exceptional circumstances.*”
- An urging of the Welsh Government to increase the commissioning numbers for pre-registration children nursing to ensure section 25B of the Nurse Staffing Levels (Wales) Act 2016 can be fulfilled and successfully implemented in the paediatric inpatients setting, without a reliance on agency nursing.
- The need for more nurse consultants in Wales, in particular consultants covering children’s nursing services, education, school nursing and neonatal nursing.

3.38. The following comments were each made by single respondents:

- That section 25B should apply to all areas of care as per point 3.17 above;
- Where paragraph 7 states that the designated person *should* be registered with the Nursing and Midwifery Council, would the word “*must*” be more appropriate?
- In paragraph 9 suggest “*person-centred*” rather than “*patient-centred*”;
- Should paragraph 9 reiterate that the designated person should be assured that the prescribed triangulated methodology has been used in calculating nurse staffing levels?
- Paragraph 38 point 3 - which discusses the need to give consideration to cultural and religious practices within professional judgement - should include “*spiritual*” needs;
- That paragraph 38 point 11 - which discusses the active offer of providing services in Welsh – should include the words “*where possible*”;
- A reiteration of the point at 3.6 above that a child’s right to determine their care pathway needs to be considered. This respondent expanded on the point by referencing the draft WG transition and handover guidance (based on 2016 NICE guidance) which supports the assertion;
- The Children’s Commissioner for Wales welcomed the extension to paediatric inpatient wards, and also welcomed the engagement that had been undertaken with youth patient groups during its revision;
- A reiteration of point 3.13 above;
- Where paragraph 13 mentions “*permanent staff*” should be revised to “*staff on substantive contracts*”;
- Concern that current challenges faced by health boards in implementing the Act in adult medical and surgical wards make the extension timeframe for paediatrics unrealistic and that the coming into force date should be deferred;
- A reiteration of point 3.5 above.
- Member of the public used the section to raise concerns that the guidance ... “*will enhance the inequity...*” of care in rural settings versus urban counterparts.

Q5 and Q6 Welsh Language

- 3.39. Questions five and six asked how the respondents felt the guidance would impact opportunities for people to use Welsh, and treating Welsh language no less favourably than English; and how the guidance could be changed to have a positive effect or to not have an adverse effect on opportunities to use Welsh and treating Welsh no less favourably than English.
- 3.40. Six of the 15 respondents either gave a NIL response or simply commented that the statutory guidance is “*within current guidance for implementation of the Welsh Language*”.
- 3.41. Six of the respondents explicitly noted that as the statutory guidance will be available bilingually, it treated Welsh no less favourably than English and/or provided opportunity for Welsh to be used in the workplace.
- 3.42. Four respondents used this section to raise concerns about there being sufficient Welsh-speaking staff to have one on every shift, and that recruiting to solve this was a persistent issue. Further, the RCN added that the Welsh Government should make a long term commitment to expanding the Welsh language nursing workforce.
- 3.43. The following comments were each made by single respondents:
- Recognition of the statutory guidance referencing the Welsh Language Standards but not creating any novel opportunities for the use of the Welsh language;
 - Do the requirements of More Than Just Words need to be fleshed out in fuller detail within this statutory guidance?
 - Increased staffing levels could positively assist in supporting the aim of achieving at least one Welsh speaking nurse on each shift;
 - The inclusion of reference to Welsh Language Standards and More Than Just Words were welcomed by one responded – though for sake of transparency, these were not additions made in the recent revisions but appeared in the original version of the statutory guidance;
 - The revision of the statutory guidance presents an opportunity to include more references to Welsh Language Standards throughout, and add Welsh language provision under the reasonable requirements section, rather than just professional judgement where it is currently mentioned;
 - One member of the public commented that the guidance needs to consider the needs of those who *do not* speak Welsh and meet the needs of all individuals.

Q7 Impact on groups with protected characteristics

- 3.44. The final question of the consultation asked for the respondents’ views on the impact the statutory guidance would have on groups with protected characteristics, either positive or negative.
- 3.45. Five respondents were of the view that the statutory guidance had no negative impact or did not change current specifications and practices with regards to protected characteristics.

- 3.46. Four respondents highlighted that it would have a positive impact on the protected characteristic of age, as there had previously been no paediatric settings included under section 25B of the Act.
- 3.47. Two respondents did not answer this question.
- 3.48. Two respondents noted that there could be a negative impact on 16 and 17 year olds that were being cared for on an adult ward if their expressed choice to remain on a paediatric ward had not been factored into the decision making process in determining their care pathway. This reiterates the issue raised at point 3.6 above.
- 3.49. Two respondents commented on the need to ensure nurse staffing levels meet the needs of patients with additional needs such as learning disabilities (as mentioned in paragraph 38 point 10 of the statutory guidance).
- 3.50. One responded (HDUHB) reiterated the issue covered in point 3.10 above – of a pregnant young person receiving maternity care in non-paediatric settings.
- 3.51. One respondent (PHW) questioned whether there was a need to be more explicit in paragraph 20 about the easily accessible formats that should be available to patients when it comes to informing them of nurse staffing levels – namely audio, braille, British Sign Language, Easy Read and large print.
- 3.52. One respondent (member of the public) commented that the guidance would have a “*huge negative impact on the whole of Pembrokeshire*” if used to block return of the paediatric ambulatory care unit.

4. Next Steps

- 4.1 The analysis of responses included within this document will inform further minor revisions of the statutory guidance. Whilst it will not be possible to incorporate all views, particularly where there is divergence of opinion amongst respondents or where the powers under the Act do not enable us to incorporate the amendments suggested, the guidance will reflect the views offered by the consultation where possible.
- 4.2 The statutory guidance will be published in Welsh and English on the Welsh Government website. It is expected that this guidance will be published in spring of 2021, to be used by the All Wales Nurse Staffing Group to produce corresponding operational guidance for the paediatric inpatient ward setting.
- 4.3 Any additional comments made in the consultation that were not directly related to the revised statutory guidance will be captured and shared with the relevant policy officials/bodies to be addressed through the appropriate channels.

4.4 The *Nurse Staffing Levels (Extension of Situations) (Wales) Regulations 2021* are scheduled to be debated in the Senedd on 23 February 2021. The coming-into-force date of those regulations is currently planned for October 2021.