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Delegated Powers and Law Reform Committee

By Email.

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*Jeane Freeman*

**HEALTH AND CARE (STAFFING) (SCOTLAND) BILL – NEW POWERS TO MAKE SUBORDINATE LEGISLATION AT STAGE 3**

I am writing to inform you of my intention to lodge an amendment to the Health and Care (Staffing) (Scotland) Bill at Stage 3 which would provide Scottish Ministers with a regulation making power to amend, add or remove factors to the list contained at 82A(5) of the Public Services Reform (Scotland) Act 2010 as inserted by this Bill. The intention is that this amendment will only be moved if amendments seeking to curtail the overall flexibility of section 82A(5) are lodged and agreed. We are concerned that if we wait until all non-Government amendments are lodged, we may have to address this issue through a manuscript amendment. To avoid this and ensure the DPLRC had an opportunity to set out the background to our proposal.

In developing the proposals to extend the application of staffing tools and methodologies to the care sector the Government has always recognised that the development of such tools and methodologies has not yet been undertaken for this sector. This is in contrast to the tools and method already in operation in the NHS, which the Bill seeks to mandate.

The Government has also publicly recognised that, for any tool and methodology to be effective, they must both be developed by the sector, for the sector, and be evidence based for that context. For this reason the Bill confers a function on the Care Inspectorate to oversee and facilitate the development of staffing methodologies for care services in collaboration with the sector. Section 82A(5) of the Bill lists factors that may be taken account of as part of a staffing method developed for care services.



The provision extends to care services for adults but also to such other services as may be specified in regulations. There is therefore scope for this to apply to a wide range of care services from residential care homes to child minders. As set out in the Policy Memorandum for the Bill, the intention is that the Care Inspectorate will explore the development of a methodology for care homes for older people in the first instance. It is recognised that flexibility is required to ensure a tool or method is not put in place where there is no evidence that to do so would improve the provision of care. Similarly, flexibility is required to ensure that a staffing method for a particular type of care service only takes into account factors relevant to the delivery of high quality care in that type of care service.

At Stage 2, amendments were lodged which sought to make certain components of a staffing method for care in section 82A(5) mandatory. During the Stage 2 debate it was acknowledged that the staffing methods which had yet to be developed required to be flexible enough to meet the specific needs of a number of distinct care service groups.

The Government appreciates that staffing methods which are developed for different types of care service should be tailored to fit that particular care service where required. It should not be assumed that a methodology that works for one type of care service, however, will necessarily work for all types of care service. The collaborative approach to the development of a method required by section 82A(2) is fundamental to ensuring that such approaches can be requested, defined, tested and adopted by the services that will use them.

The Government is concerned that, should an amendment be put forward at Stage 3 which seeks to mandate that certain components be included in a staffing method, this will only be applicable to one type of registered care service. This could render the process ineffective and unacceptable for other types of registered care service.

The Government therefore considers it appropriate to lodge an amendment to mitigate the impact of such a change to 82A(5). The intention is to ensure that flexibility is retained over the factors included in the list at this section of the Bill. As mentioned above, the intention is that this amendment will be moved only if amendments seeking to curtail the overall flexibility of the provision are lodged and agreed.

The policy intention behind the amendment, should it be required, is that the power would allow the Scottish Ministers to apply different components at subsection (5) for different staffing methods. This would allow the Scottish Ministers to remove or amend the list on 82A(5) as it may be inappropriate for a particular type of care that a method was being developed for. It would also allow the list to be varied so that different lists could apply for different types of care services.


For example, a factor might be suitable for inclusion in a staffing method for care homes, but not for care-at-home (if care-at-home were to be specified by regulations under 82A(1)(b)). Section 104(1)(c) of the 2010 Act provides that any power conferred by Part 5 on the Scottish Ministers to make an order or regulations may be exercised so as to make different provisions for different purposes. The Bill inserts new Chapter 3A into Part 5 of the 2010 Act. Therefore, the Scottish Ministers will be able to use regulations made under a new regulation making power contained in Chapter 3A to make different provision for different staffing methods.

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In recognition of the fact that the power would allow the Scottish Ministers to amend the text of the Bill itself, the Scottish Government believes that the affirmative procedure is appropriate and gives a suitable means for Parliament to scrutinise such changes.

I am grateful for your consideration of the Government's proposals at this late stage. Should you require any further information in relation to this, please do not hesitate to ask.

*Kind regards*  
  
**JÉANE FREEMAN**

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