Submission to Scottish Ministers

Revision of statutory staffing level tools to reinstate paid restorative breaks

Purpose

To seek ministerial consideration of Healthcare Improvement Scotland's (HIS) recommendation to revise statutory staffing level tools under the Health and Care (Staffing) (Scotland) Act 2019, reinstating paid restorative break time within the underlying methodology while applying a standardised deduction for unpaid meal breaks.

Ministers are invited to:

- Agree to accept HIS' recommendation to replace the specified staffing level tools with revised versions
- Note the implications of the methodology change for workforce planning and service delivery

Executive summary

HIS has undertaken a national methodological review of statutory staffing level tools and identified a historic assumption regarding the treatment of staff break time that is no longer methodologically robust or aligned with national priorities for staff wellbeing and safe care.

The recommendation corrects this by reinstating paid restorative breaks and unavoidable downtime within staffing calculations, while applying a consistent 8% deduction for unpaid meal breaks in line with Scottish Terms and Conditions. Modelling suggests an approximate 4–5.1% increase in recommended staffing levels, reflecting a correction to historical methodology rather than a new entitlement.

The proposed changes support delivery of Minister-accepted Nursing and Midwifery Taskforce commitments on safe staffing and workforce wellbeing.

Ministers are asked to consider whether to accept this methodological correction to statutory staffing tools, noting the workforce and service planning implications.

Background

Under section 12IJ of the Health and Care (Staffing) (Scotland) Act 2019, HIS has a statutory duty to monitor the effectiveness of staffing tools and recommend revisions where tools no longer accurately reflect the staffing required for safe and sustainable care. A national review undertaken in 2024-25 identified shortcomings in how breaks and low-demand periods were historically treated within several tools. Please see the below table explaining the terminology used in this paper.

Terminology	Definition
Unpaid meal breaks	Time that staff are **not** paid for and should be fully relieved of duty, in line with Scottish Terms and Conditions (STAC). This time is excluded from new staffing tools and is assumed at 8% of a 12.5-hour shift i.e. 1-hour.
Paid restorative breaks	Short periods during which staff remain **at work and available to respond** but are able to temporarily step back to maintain alertness, hydration, elimination and wellbeing. These are part of normal clinical workload and **not** a contractual entitlement issue.
Down time due to low patient or service demand	Periods (e.g. during night shift) when patient needs temporarily reduce, but minimum safe staffing must still be maintained. Staff remain available, clinically accountable, and responsible for continuous observation and response.

Proposed changes

HIS recommends a consistent national approach:

- Retain paid restorative breaks and periods of unavoidable low service demand within staffing calculations
- Apply a standard 8% deduction to represent unpaid meal breaks, reflecting the most common national shift pattern across these care settings

Historical exclusion of all ‘unproductive time’ failed to distinguish between unpaid meal breaks (which are not paid and staff should be fully relieved of duty, as per Scottish Terms and Conditions (STAC)), and other aspects of ‘unproductive time’ or paid breaks (short comfort/wellbeing breaks) and down-time (when there is no patient or service need but minimum safe staffing required and staff remain available to respond to patient needs e.g. on night shift when patients asleep).

Paid breaks should contribute to workload as it is unreasonable to expect staff to work continuously without being able to take restorative breaks or at times of little or no patient or service need. Removing all of the unproductive time reduces the required Care Hours Per Patient Day (CHPPD) and Whole Time Equivalent (WTE) output, and therefore underestimates the staffing required.

Key points

- The concept of 'unproductive time' in historical observation studies has always been problematic because it groups fundamentally different types of time together. While unpaid breaks are genuinely time away from work, paid restorative breaks and down-time during low demand are still part of the workload because staff remain responsible, alert, and available to respond. The staffing tools must therefore recognise that continuous clinical presence, even in quieter periods, is an essential component of safe care.
- Observation studies used to develop staffing tools grouped both paid and unpaid breaks and staff down-time into 'unproductive time', which was entirely excluded. This assumption is no longer methodologically robust as does not make adequate provision for staff well-being or minimum safe staffing in periods of low activity (e.g. night shift).
- A national review shows that most nursing shifts include 1-hour unpaid time in a 12.5 hour shift (~8%); a standard 8% unpaid deduction is therefore proposed across all relevant tools. This has already been applied to the new maternity and mental health and learning disability tools. This paper seeks to standardise this across **all** staffing tools.
- Paid restorative breaks are not excluded under Agenda for Change (AfC) terms and conditions; therefore, their removal is now contractually or operationally justified.
- Modelling shows that reinstating paid breaks increases the recommended WTE output by approximately 4%–5.1%, depending on tool. This proposal does **not** create any new break entitlement and does not change STAC. Rather, it ensures that staffing tools correctly reflect the workload already observed in practice. The uplift reflects a correction to methodology, not a new cost pressure.
- Periods of restorative breaks and low demand down time are essential for maintaining vigilance during high-risk clinical tasks such as continuous observation, rapid response, medication administration, and escalation decision-making.
- Stakeholder engagement (including the Nursing and Midwifery Taskforce Working Environment subgroup) has confirmed strong support for for reinstating paid breaks as a way to improve wellbeing, support safe practice, and meet statutory duties.
- HIS met with representatives from the Scottish Terms and Conditions (STAC) Committee who clarified that the removal of unpaid breaks was in line with the STAC. With regards to the paid breaks, including restorative rest breaks or other aspects of unproductive time, this would be classed as an operational matter rather than covered by the STAC.
- HIS' statutory responsibility to ensure methodological accuracy of staffing tools; decisions on affordability, workforce prioritisation and implementation rest with ministers and NHS boards.

Impact and implications

The revised methodology produces more accurate staffing recommendations, better supports patient safety, reduces workforce fatigue risk, and aligns with national commitments to staff wellbeing as follows:

- Quality and Safety – more accurate staffing recommendations support safer care
- Workforce Wellbeing – improved likelihood that staff can take short restorative breaks safely
- Consistency – standardisation with national shift patterns and other newly developed staffing tools
- Risk Reduction – addresses risks associated with fatigue, burnout and inaccurate workforce planning

HIS emphasises that implementation, affordability, and workforce planning decisions remain matters for ministers and NHS boards.

Stakeholder engagement

This work was developed collaboratively with:

- Expert clinical working groups with NHS board, trade union and professional body representation
- Nursing and Midwifery Taskforce (Phase 2 – Working Environment and Work-Life Balance subgroup). The recommendation supports delivery of Minister-accepted Nursing and Midwifery Taskforce actions relating to safe staffing and workforce wellbeing
- Professional bodies including the Royal College of Nursing and Royal College of Midwives
- Staff Side representatives
- Scottish Government Workforce Directorate and Chief Nursing Officer Directorate
- Scottish Terms and Conditions Committee representatives

Recommendation

Ministers are invited to:

1. Agree to the replacement of the specified staffing tools with revised versions (appendix 1)
2. Agree the methodological correction to reinstate paid restorative breaks
3. Note the projected workforce implications and the separation of responsibilities under the Act

Appendix 1

• Schedule Staffing Level Tools Column 1 Kind of health care Provision: 'Adult inpatient provision by registered nurses in hospital wards with 17 occupied beds or more on average remains unchanged.

• Schedule Staffing Level Tools Column 2 Staffing level tool:

'Adult Inpatient Staffing Level Tool Version 5 (3)'

Replacement with a revised staffing level tool as follows:

'Adult Inpatient Staffing Level Tool Version 6 (3)'

• (3) Version 5 was developed by Healthcare Improvement Scotland and was made available online at https://workforce.mhs.scot.nhs.uk/eyou/Authentication/Login.aspx, in 2024, to those granted access.

Replaced with:

(3) Version 6 was developed by Healthcare Improvement Scotland and was made available online at https://workforce.mhs.scot.nhs.uk/eyou/Authentication/Login.aspx, in 2024, to those granted access.

Small Wards

• Schedule Staffing Level Tools Column 1 Kind of health care Provision: 'Small ward provision by registered nurses in hospital wards with 16 occupied beds or fewer on average – remains unchanged.

• Schedule Staffing Level Tools Column 2 Staffing level tool: ‘Small Wards Staffing Level Tool Version 4 (12)’

Replacement with a revised staffing level tool as follows:

‘Small Wards Staffing Level Tool Version 5 (12)’

• (12) Version 4 was developed by Healthcare Improvement Scotland and was made available online at https://workforce.mhs.scot.nhs.uk/eyou/Authentication/Login.aspx, in 2024, to those granted access.

Replaced with:

(12) Version 5 was developed by Healthcare Improvement Scotland and was made available online at https://workforce.mhs.scot.nhs.uk/eyou/Authentication/Login.aspx, in 2024, to those granted access.

Emergency Care

• Schedule Staffing Level Tools Column 1 Kind of health care Provision: ‘Emergency Care provision by registered nurses or by medical practitioners in emergency departments in hospitals’ – remains unchanged.

• Schedule Staffing Level Tools Column 2 Staffing level tool:

‘Emergency Care Provision Staffing Level Tool Version 5 (7)’

Replacement with a new staffing level tool as follows:

‘Emergency Care Provision Staffing Level Tool Version 6 (7)’

• (7) Version 5 was made available online on the RLDatix SafeCare Platform as part of the national e-rostering contract to those granted access.

Replaced with:

(7) Version 6 was made available online on the RLDatix SafeCare Platform as part of the national e-rostering contract to those granted access.