

A submission is attached in response to the questions MS(C) asked below in feedback to our initial submission of 18 September (questions in email below).

Please do contact us with any further initial questions or steers following this additional advice.

Thanks

NR

NR | Head of Social Care Workforce Sponsorship | Workforce Development (Social Care Strategy and Development)

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M: I&S

From: pshelenwhately <pshelenwhately@dhsc.gov.uk>

Sent: 23 September 2020 08:37

To: Boaden, Anna <Anna.Boaden@dhsc.gov.uk>; pshelenwhately <pshelenwhately@dhsc.gov.uk>; psmatthancock <psmatthancock@dhsc.gov.uk>

Cc: Dyson, Michelle <Michelle.Dyson@dhsc.gov.uk>; Miller, Stuart <Stuart.Miller@dhsc.gov.uk>; Jay, Tabitha <Tabitha.Jay@dhsc.gov.uk>; DL - Private Office Submissions Copy List <DL_Private_Office_Submissions_Copy_List@dhsc.gov.uk>; Addison, Alette <alette.addison@dhsc.gov.uk>; Chaloner, Rebecca <Rebecca.Chaloner@dhsc.gov.uk>; Surrey, Tom <Tom.Surrey@dhsc.gov.uk>; Vineall, William <william.vineall@dhsc.gov.uk>; Name Redacted

Name Redacted Name Redacted Name Redacted Dare, Victoria <Victoria.Dare@dhsc.gov.uk>; Name Redacted Name Redacted Name Redacted Name Redacted

Subject: RE: Submission - legal options for restricting staff movement

Hi Anna,

Thanks so much for your work on this. Ministers have now reviewed the submission with comments/questions below.

Sofs is broadly content with Option 1 particularly the point on focusing on regulation 18 on safe staffing. He is content with a sunset clause but does not want a review after a period of 6 months, he would like it to end when the Coronavirus Act ends. He is also content with keeping the offence civil, as is the case with current regulation 18 and not introducing criminal powers.

Sofs is otherwise content for team to address MSC's questions below and work on the further detail. MSC has raised the below questions:

1. Does Capacity tracker tell us 91% of care homes are confident staff are NOT moving, or that they are restricting movement [which is not the same]?
2. How good is compliance with Reg. 18 at the moment? What % of providers are making sure they have sufficient suitably qualified etc staff?
3. What are the consequences of not being compliant with Reg 18?
4. How would this be assessed and enforced?
5. If we went for the Reg 12 option, what is the soonest this could be brought into action? Vs Reg 18? [date please, or range of dates]
6. Re "an employer has no power to stop an individual working for someone else unless there

is something in contract ..." - surely that is exactly what we are expecting employers to do- to update contracts? But are they allowed to do this? She has a recollection that if someone is on a zero hours contract you cannot stop them working for someone else. She would like to have further info on how we expect this to be put into practice.

7. Given the risk flagged in para 14 that there may be a greater impact on women working part time / on zero hours contracts, can we have a mitigation on this? She would prefer to see this benefiting this group of people by giving them guaranteed minimum hours [or at least the option of a guaranteed hours should they wish] in return for the commitment to only working in one place.

8. It would be helpful to know what the workforce view is on this - what conversations have been had with trade union representatives? Do they have suggestions of how we can make this work better for the workforce? MSC would like one outcome from all this to be that sick pay becomes the norm for the care workforce, and guaranteed hours for those who want them - so hopes we can work with WF reps on this. MSC is happy to speak directly to **NR** and the others if helpful.

Overall MSC is minded to go with the recommendation to take the Reg 18 route but she is not yet assured about its effectiveness, hence her questions.

Additionally, she thinks we do need to make sure we address movement between care homes and other covid-risk settings e.g., hospitals - and potentially also food processing plants. But we don't want this to accidentally cover visiting district nurses so need to be clear on that.

It would be much appreciated if we could receive an updated note addressing MSC's questions in time for her box on Thursday at 12:30pm.

Please let me know if you have any questions on the above – very happy to speak if helpful.

Thanks

NR

From: Boaden, Anna <Anna.Boaden@dhsc.gov.uk>

Sent: 18 September 2020 21:12

To: pshelenwhately <pshelenwhately@dhsc.gov.uk>; psmatthancock <psmatthancock@dhsc.gov.uk>

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Name Redacted **Name Redacted**

Subject: Submission - legal options for restricting staff movement

Dear **NR** and **NR**

With many thanks to colleagues, please find attached advice on legal options to mandate the restriction of staff movement between care homes. I have marked this as urgent given the speed with which any legislative changes may need to be introduced.