



Health and Care (Staffing) (Scotland) Act 2019

2019 asp 6

The Bill for this Act of the Scottish Parliament was passed by the Parliament on 2nd May 2019 and received Royal Assent on 6th June 2019

An Act of the Scottish Parliament to make provision about staffing by the National Health Service and by providers of care services.

PROSPECTIVE

PART 1

GUIDING PRINCIPLES FOR STAFFING

1 Guiding principles for health and care staffing

- (1) The guiding principles for health and care staffing are—
- (a) that the main purposes of staffing for health care and care services are—
 - (i) to provide safe and high-quality services, and
 - (ii) to ensure the best health care or (as the case may be) care outcomes for service users,
 - (b) that, in so far as consistent with those main purposes, staffing for health care and care services is to be arranged while—
 - (i) improving standards and outcomes for service users,
 - (ii) taking account of the particular needs, abilities, characteristics and circumstances of different service users,
 - (iii) respecting the dignity and rights of service users,
 - (iv) taking account of the views of staff and service users,
 - (v) ensuring the wellbeing of staff,
 - (vi) being open with staff and service users about decisions on staffing,
 - (vii) allocating staff efficiently and effectively, and
 - (viii) promoting multi-disciplinary services as appropriate.

- (2) In this Part—

Status: This version of this Act contains provisions that are prospective.

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“care service” means a service mentioned in section 47(1) of the Public Services Reform (Scotland) Act 2010,

“health care” means a service for or in connection with the prevention, diagnosis or treatment of illness,

“multi-disciplinary services” means health care or care services delivered together by individuals from such a range of professional disciplines as necessary in order to meet the needs of, and improve standards and outcomes for, service users,

“service users” means individuals to whom or in relation to whom health care or a care service is provided,

“standards and outcomes for service users” means—

- (a) in relation to health care, the standards and outcomes published by the Scottish Ministers under section 10H(1) of the National Health Service (Scotland) Act 1978, and
- (b) in relation to care services, the standards and outcomes published by the Scottish Ministers under section 50 of the Public Services Reform (Scotland) Act 2010.

2 Guiding principles etc. in health care staffing and planning

- (1) In carrying out the duty relating to staffing imposed by section 12IA of the National Health Service (Scotland) Act 1978, every Health Board and the Common Services Agency for the Scottish Health Service must have regard to the guiding principles for health and care staffing.
- (2) In planning or securing the provision of health care from another person under a contract, agreement or arrangements made under or by virtue of the National Health Service (Scotland) Act 1978, every Health Board and the Common Services Agency for the Scottish Health Service must have regard to—
 - (a) the guiding principles for health and care staffing, and
 - (b) the need for the person from whom the provision of health care is to be secured to have appropriate staffing arrangements in place.
- (3) As soon as reasonably practicable after the end of each financial year, every Health Board and the Common Services Agency for the Scottish Health Service must provide information to the Scottish Ministers on the steps they have taken to comply with subsections (1) and (2).
- (4) Information provided under subsection (3) must set out how the steps taken by the Health Board or (as the case may be) Common Services Agency for the Scottish Health Service to comply with subsections (1) and (2) have improved outcomes for service users.
- (5) As soon as reasonably practicable after the end of each financial year, the Scottish Ministers must collate information received under subsection (3) into a combined report to be laid before the Scottish Parliament.
- (6) A report laid under subsection (5) must set out—
 - (a) the steps taken by Health Boards and (as the case may be) the Common Services Agency for the Scottish Health Service to comply with subsections (1) and (2), and

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- (b) the steps that the Scottish Ministers will take in relation to the staffing of the health service in response to the report's conclusions and recommendations.

3 Guiding principles etc. in care service staffing and planning

- (1) In carrying out the duty relating to staffing imposed by section 7, any person who provides a care service must have regard to the guiding principles for health and care staffing.
- (2) In planning or securing the provision of a care service from another person under a contract, agreement or other arrangements, every local authority and every integration authority (within the meaning of section 59 of the Public Bodies (Joint Working) (Scotland) Act 2014) must have regard to—
 - (a) the guiding principles for health and care staffing, and
 - (b) the duties relating to staffing imposed on persons who provide care services—
 - (i) by virtue of subsection (1) and sections 7 to 10, and
 - (ii) by virtue of Chapters 3 and 3A of Part 5 of the Public Services Reform (Scotland) Act 2010.
- (3) Every local authority and every integration authority must have regard to any guidance issued by the Scottish Ministers about the operation of subsection (2).
- (4) Before issuing such guidance, the Scottish Ministers must consult—
 - (a) Social Care and Social Work Improvement Scotland,
 - (b) such persons as they consider to be representative of the providers, commissioners and users of care services,
 - (c) such trade unions and professional bodies as they consider to be representative of individuals working in care services,
 - (d) such persons as they consider to be representative of carers (within the meaning of section 1 of the Carers (Scotland) Act 2016), and
 - (e) such other persons as they consider appropriate.
- (5) The Scottish Ministers must publish any guidance issued under subsection (3).
- (6) As soon as reasonably practicable after the end of each financial year, every local authority and every integration authority (within the meaning of section 59 of the Public Bodies (Joint Working) (Scotland) Act 2014) must publish information on—
 - (a) the steps they have taken, and
 - (b) any ongoing risk that may affect their ability, to comply with subsection (2).

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PROSPECTIVE

PART 2

STAFFING IN THE NHS

4 NHS duties in relation to staffing

- (1) The National Health Service (Scotland) Act 1978 is amended as follows.
- (2) After section 12I insert—

“Staffing

12IA Duty to ensure appropriate staffing

- (1) It is the duty of every Health Board and the Agency to ensure that at all times suitably qualified and competent individuals, from such a range of professional disciplines as necessary, are working in such numbers as are appropriate for—
 - (a) the health, wellbeing and safety of patients,
 - (b) the provision of safe and high-quality health care, and
 - (c) in so far as it affects either of those matters, the wellbeing of staff.
- (2) In determining what, in a particular kind of health care provision, constitutes appropriate numbers for the purposes of subsection (1), regard is to be had to—
 - (a) the nature of the particular kind of health care provision,
 - (b) the local context in which it is being provided,
 - (c) the number of patients being provided it,
 - (d) the needs of patients being provided it, and
 - (e) appropriate clinical advice.

12IB Duty to ensure appropriate staffing: agency workers

- (1) Where, in order to comply with the duty under section 12IA, a Health Board, a relevant Special Health Board or the Agency secures the services of an agency worker (within the meaning of the Agency Workers Regulations 2010), it must comply with subsection (2).
- (2) Subject to subsection (3), the amount to be paid to secure the services of that worker during a period should not exceed 150% of the amount that would be paid to a full-time equivalent employee of the Health Board, relevant Special Health Board or the Agency to fill the equivalent post for the same period.
- (3) Where, despite subsection (2), in a quarterly reporting period a Health Board, relevant Special Health Board or the Agency does pay an amount higher than the amount prescribed in subsection (2), it must report to the Scottish Ministers, as soon as practicable after the end of that period—

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- (a) the number of occasions in that period on which it has paid an amount higher than the amount prescribed in subsection (2),
 - (b) the amount paid on each such occasion (expressed as a percentage of the amount that would be paid to a full-time equivalent employee of the Health Board, relevant Special Health Board or the Agency to fill the equivalent post for the same period) and,
 - (c) the circumstances that have required the higher amount to be paid.
- (4) In subsection (3), “quarterly reporting period” means—
 - (a) the period from the day that the Bill for the Health and Care (Staffing) (Scotland) Act 2019 receives Royal Assent to whichever of 31 March, 30 June, 30 September and 31 December first occurs thereafter,
 - (b) each subsequent three-month period.
- (5) The Scottish Ministers must publish in such manner and at such intervals as they consider appropriate—
 - (a) information from Health Boards, relevant Special Health Boards and the Agency on the amount spent on all agency workers, and
 - (b) reports received by them under subsection (3).

12IC Duty to have real-time staffing assessment in place

- (1) It is the duty of every Health Board and the Agency to put and keep in place arrangements for the real-time assessment of its compliance with the duty imposed by section 12IA.
- (2) The arrangements under subsection (1) must, in particular, include—
 - (a) a procedure for the identification, by any member of staff, of any risks caused by staffing levels to—
 - (i) the health, wellbeing and safety of patients,
 - (ii) the provision of safe and high-quality health care, or
 - (iii) in so far as it affects either of those matters, the wellbeing of staff,
 - (b) a procedure for the notification of any such risk to an individual with lead professional responsibility (whether clinical or non-clinical) in the area where the risk was identified,
 - (c) a procedure for the mitigation of any such risks, so far as possible, by such an individual, and a requirement for that individual to seek and have regard to appropriate clinical advice, as necessary, in carrying out such mitigation,
 - (d) raising awareness among staff about the procedures described in paragraphs (a) and (c),
 - (e) encouraging and enabling staff to use the procedures described in paragraphs (a) and (b),
 - (f) training individuals with lead professional responsibility (whether clinical or non-clinical) for particular types of health care in how to implement the arrangements put in place under paragraphs (a) to (e), and
 - (g) ensuring that such individuals receive adequate time and resources to implement those arrangements.