

Health and Care (Staffing) (Scotland) Bill

[AS INTRODUCED]

CONTENTS

Section

PART 1

GUIDING PRINCIPLES FOR STAFFING

- 1 Guiding principles for health and care staffing
- 2 Guiding principles in health care staffing and planning
- 3 Guiding principles in care service staffing and planning

PART 2

STAFFING IN THE NHS

- 4 NHS duties in relation to staffing
- 5 Application of duties to certain Special Health Boards

PART 3

STAFFING IN CARE SERVICES

- 6 Duty on care service providers to ensure appropriate staffing
- 7 Training of staff
- 8 Ministerial guidance on staffing
- 9 Interpretation of sections 6 to 8
- 10 Functions of SCSWIS in relation to staffing methods
- 11 Care services: consequential amendments

PART 4

GENERAL PROVISIONS

- 12 Ancillary provision
- 13 Commencement
- 14 Short title

**THE FOLLOWING ACCOMPANYING DOCUMENTS ARE ALSO PUBLISHED:
Explanatory Notes (SP Bill 31-EN), a Financial Memorandum (SP Bill 31-FM), a Policy
Memorandum (SP Bill 31-PM) and statements on legislative competence (SP Bill 31-LC).**

Health and Care (Staffing) (Scotland) Bill

[AS INTRODUCED]

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

PART 1

GUIDING PRINCIPLES FOR STAFFING

- 5 **1 Guiding principles for health and care staffing**
- (1) The guiding principles for health and care staffing are—
- 10 (a) that the main purpose of staffing for health care and care services is to provide safe and high-quality services,
- (b) that, in so far as consistent with the main purpose, staffing for health care and care services is to be arranged while—
- (i) taking account of the particular needs, abilities, characteristics and circumstances of different service users,
- (ii) respecting the dignity and rights of service users,
- (iii) taking account of the views of staff and service users,
- 15 (iv) ensuring the wellbeing of staff,
- (v) being open with staff and service users about decisions on staffing, and
- (vi) allocating staff efficiently and effectively.
- (2) In this Part—
- 20 “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,
- “service users” means individuals to whom or in relation to whom health care or a care service is provided.

2 Guiding principles in health care staffing and planning

- 5 (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—
- 10 (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 Guiding principles in care service staffing and planning

- 15 (1) In carrying out the duty relating to staffing imposed by section 6, 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—
- 20 (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 sections 6 to 8, and
- (ii) by virtue of Chapters 3 and 3A of Part 5 of the Public Services Reform (Scotland) Act 2010.
- 25

PART 2

STAFFING IN THE NHS

4 NHS duties in relation to staffing

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

“Staffing

12IA Duty to ensure appropriate staffing

35 It is the duty of every Health Board and the Agency to ensure that at all times suitably qualified and competent individuals are working in such numbers as are appropriate for—

- (a) the health, wellbeing and safety of patients, and
- (b) the provision of high-quality health care.

12IB Duty to follow common staffing method

(1) In relation to health care of a type mentioned in section 12IC, a Health Board or the Agency (as the case may be) must follow the common staffing method set out in subsection (2).

(2) The common staffing method means that a Health Board or the Agency (as the case may be)—

(a) uses the staffing level tool and the professional judgement tool as prescribed in regulations under subsection (3) and takes into account the results from those tools,

(b) takes into account, in so far as relevant, any measures for monitoring and improving the quality of health care which are published as standards and outcomes under section 10H(1) by the Scottish Ministers,

(c) takes into account—

(i) its current staffing levels and any vacancies,

(ii) the local context in which it provides health care,

(iii) any assessment by HIS, and any relevant assessment by any other person, of the quality of health care which it provides,

(iv) comments by patients which relate to the duty imposed by section 12IA, and

(v) comments by its employees which relate to the duty imposed by section 12IA, and

(d) having followed the steps described in paragraphs (a) to (c), and having additionally—

(i) taken into account patient needs,

(ii) identified and taken all reasonable steps to mitigate any risks, and

(iii) taken into account appropriate clinical advice,

decides what changes (if any) are needed as a result to its staffing levels, and to the way in which it provides health care.

(3) The Scottish Ministers may by regulations prescribe—

(a) a “staffing level tool” designed to provide quantitative information relating to workload, based on patient needs, in order to assist in determining the appropriate staffing levels for a particular kind of health care provision,

(b) a “professional judgement tool” designed to provide quantitative information relating to professional judgement in order to assist in determining the appropriate staffing levels for a particular kind of health care provision, and

(c) the frequency at which such tools are to be used as part of the common staffing method.

(4) The Scottish Ministers may by regulations amend subsection (2) so as to change the description of the common staffing method.

12IC Common staffing method: types of health care

- (1) The types of health care are those described in the first column of the table below, in so far as they are provided at a location and by employees of a kind listed in the corresponding entries in the second and third columns.

<i>Type of health care</i>	<i>Location</i>	<i>Employees</i>
Adult inpatient provision	Hospital wards of 15 beds or more	Registered nurses
Clinical nurse specialist provision	Hospitals and community settings	Registered nurses who work as clinical nurse specialists
Community nursing provision	Community settings	Registered nurses
Community children's nursing provision	Community settings	Registered nurses
Emergency care provision	Emergency departments in hospitals	Registered nurses and medical practitioners
Maternity provision	Hospitals and community settings	Registered midwives
Mental health and learning disability provision	Mental health and learning disability units in hospitals	Registered nurses
Neonatal provision	Neonatal units in hospitals	Registered midwives and registered nurses
Paediatric inpatient provision	Paediatric wards in hospitals	Registered nurses
Perioperative provision	Operating theatres in hospitals	Registered nurses
Small ward provision	Hospital wards of 14 beds or fewer	Registered nurses

- (2) In the third column of the table in subsection (1), references to—
- (a) registered nurses,
 - (b) registered midwives, and
 - (c) medical practitioners,

include other persons providing care for patients and acting under the supervision of, or discharging duties delegated to the person by, the registered nurse, registered midwife or medical practitioner (as the case may be).

- 5 (3) The Scottish Ministers may by regulations amend subsections (1) and (2) so as to add, remove, or change the description of a type of health care (including by amending any column of the table in subsection (1)).

12ID Training and consultation of staff

In complying with the duty imposed by section 12IB, every Health Board and the Agency must—

- 10 (a) encourage its employees to give views on its staffing arrangements for the types of health care described in section 12IC,
- (b) take into account and use any such views it receives to identify best practice in relation to such staffing arrangements,
- (c) train employees using the common staffing method on how to use it,
- 15 (d) ensure that those employees receive adequate time to use the common staffing method, and
- (e) provide information to employees engaged in the types of health care described in section 12IC about its use of the common staffing method, including about—
- 20 (i) the results from using the staffing level tool and the professional judgement tool under paragraph (a) of section 12IB(2),
- (ii) the steps taken under paragraphs (b) and (c) of that subsection, and
- (iii) the results of its decision under paragraph (d) of that subsection.

12IE Reporting on staffing

- 25 (1) As soon as reasonably practicable after the end of each financial year, every Health Board and the Agency must publish, and submit to the Scottish Ministers, information setting out how during that financial year it has carried out its duties under—

- 30 (a) section 12IA (including reference to the related duties under section 2 of the Health and Care (Staffing) (Scotland) Act 2019 to have regard to guiding principles in health care staffing and planning),
- (b) section 12IB, and
- (c) section 12ID.

- 35 (2) The information may be published in such manner as a Health Board or the Agency (as the case may be) considers appropriate, for example in an annual report.

12IF Ministerial guidance on staffing

- 40 (1) Every Health Board and the Agency must have regard to any guidance issued by the Scottish Ministers about the carrying out of its duties under sections 12IA to 12IE.

- (2) Such guidance may, in particular, include provision about—
- (a) the related duties under section 2 of the Health and Care (Staffing) (Scotland) Act 2019 to have regard to guiding principles in health care staffing and planning, and
 - (b) the use of the common staffing method, including—
 - (i) each of the steps described in paragraphs (a) to (c) of section 12IB(2), and
 - (ii) decision-making, under paragraph (d) of that subsection, about staffing levels and about the way in which health care is provided.
- (3) Before issuing such guidance, the Scottish Ministers must consult—
- (a) every Health Board,
 - (b) every Special Health Board,
 - (c) every integration authority (within the meaning of section 59 of the Public Bodies (Joint Working) (Scotland) Act 2014),
 - (d) HIS,
 - (e) the Agency,
 - (f) such trade unions and professional bodies as they consider to be representative of employees of Health Boards and the Agency, and
 - (g) such other persons as they consider appropriate.
- (4) The Scottish Ministers must publish any guidance issued under this section.

12IG Interpretation of sections 12H to 12IF

In sections 12H to 12IF—

“appropriate clinical advice” means advice obtained from the appropriate level and area of clinical professional structures depending on the particular circumstances of each case (for example from a person holding a senior executive role in the provision of nursing services),

“employee” means an individual in paid employment by a Health Board or the Agency (as the case may be), whether under a contract of service or apprenticeship or under a contract for services,

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

- (3) Section 12H(3) is repealed.
- (4) In section 105(3) (orders, regulations and directions), after “section 10Z7” insert “, section 12IB(4), section 12IC(3)”.

5 Application of duties to certain Special Health Boards

- (1) The State Hospitals Board for Scotland Order 1995 (S.I. 1995/574) is amended in accordance with subsections (2) and (3).

(2) In Part I of the schedule—

(a) in column 1—

- (i) after the entry relating to section 10(4) of the National Health Service (Scotland) Act 1978, insert “Section 12IA”,
- (ii) after the entry inserted by sub-paragraph (i), insert “Section 12IB”,
- (iii) after the entry inserted by sub-paragraph (ii), insert “Section 12ID”,
- (iv) after the entry inserted by sub-paragraph (iii), insert “Section 12IE”, and
- (v) after the entry inserted by sub-paragraph (iv), insert “Section 12IF”, and

(b) in column 2—

- (i) in the place corresponding to the entry inserted by paragraph (a)(i), insert “Duty to ensure appropriate staffing”,
- (ii) in the place corresponding to the entry inserted by paragraph (a)(ii), insert “Duty to follow common staffing method”,
- (iii) in the place corresponding to the entry inserted by paragraph (a)(iii), insert “Duties of training and consultation of staff”,
- (iv) in the place corresponding to the entry inserted by paragraph (a)(iv), insert “Duty of reporting on staffing”, and
- (v) in the place corresponding to the entry inserted by paragraph (a)(v), insert “Duty to have regard to Ministerial guidance on staffing”.

(3) In Part II of the schedule—

- (a) in column 1, at the end, insert “Section 2 of the Health and Care (Staffing) (Scotland) Act 2019”,
- (b) in column 2, in the place corresponding to the entry inserted by paragraph (a), insert “Duty to have regard to guiding principles in health care staffing and planning”.

(4) The Scottish Ambulance Service Board Order 1999 (S.I. 1999/686) is amended in accordance with subsections (5) and (6).

(5) In Part I of the schedule—

(a) in column 1—

- (i) after the entry relating to section 10(4) of the National Health Service (Scotland) Act 1978, insert “Section 12IA”,
- (ii) after the entry inserted by sub-paragraph (i), insert “Section 12IE”, and
- (iii) after the entry inserted by sub-paragraph (ii), insert “Section 12IF”,

(b) in column 2—

- (i) in the place corresponding to the entry inserted by paragraph (a)(i), insert “Duty to ensure appropriate staffing”,
- (ii) in the place corresponding to the entry inserted by paragraph (a)(ii), insert “Duty of reporting on staffing”, and
- (iii) in the place corresponding to the entry inserted by paragraph (a)(iii), insert “Duty to have regard to Ministerial guidance on staffing”, and

- (c) in column 3—
- (i) in the place corresponding to the entry inserted by paragraph (a)(ii), insert “Applied in so far as it relates to section 12IA of the Act and section 2 of the Health and Care (Staffing) (Scotland) Act 2019”, and
 - 5 (ii) in the place corresponding to the entry inserted by paragraph (a)(iii), insert “Applied in so far as it relates to section 12IA of the Act and section 2 of the Health and Care (Staffing) (Scotland) Act 2019”.
- (6) In Part II of the schedule—
- 10 (a) in column 1, at the end, insert “Section 2 of the Health and Care (Staffing) (Scotland) Act 2019”, and
 - (b) in column 2, in the place corresponding to the entry inserted by paragraph (a), insert “Duty to have regard to guiding principles in health care staffing and planning”.
- 15 (7) The NHS 24 (Scotland) Order 2001 (S.S.I. 2001/137) is amended in accordance with subsections (8) and (9).
- (8) In Part I of the schedule—
- (a) in column 1—
 - 20 (i) after the entry relating to section 10(4) of the National Health Service (Scotland) Act 1978, insert “Section 12IA”,
 - (ii) after the entry inserted by sub-paragraph (i), insert “Section 12IB”,
 - (iii) after the entry inserted by sub-paragraph (ii), insert “Section 12ID”,
 - (iv) after the entry inserted by sub-paragraph (iii), insert “Section 12IE”, and
 - (v) after the entry inserted by sub-paragraph (iv), insert “Section 12IF”, and
 - (b) in column 2—
 - 25 (i) in the place corresponding to the entry inserted by paragraph (a)(i), insert “Duty to ensure appropriate staffing”,
 - (ii) in the place corresponding to the entry inserted by paragraph (a)(ii), insert “Duty to follow common staffing method”,
 - 30 (iii) in the place corresponding to the entry inserted by paragraph (a)(iii), insert “Duties of training and consultation of staff”,
 - (iv) in the place corresponding to the entry inserted by paragraph (a)(iv), insert “Duty of reporting on staffing,” and
 - (v) in the place corresponding to the entry inserted by paragraph (a)(v), insert “Duty to have regard to Ministerial guidance on staffing”.
- 35 (9) In Part II of the schedule—
- (a) in column 1, at the end, insert “Section 2 of the Health and Care (Staffing) (Scotland) Act 2019”,
 - 40 (b) in column 2, in the place corresponding to the entry inserted by paragraph (a), insert “Duty to have regard to guiding principles in health care staffing and planning”.
- (10) The National Waiting Times Centre Board (Scotland) Order 2002 (S.S.I. 2002/305) is amended in accordance with subsections (11) and (12).

(11) In Part I of the schedule—

(a) in column 1—

(i) after the entry relating to section 10(4) of the National Health Service (Scotland) Act 1978, insert “Section 12IA”,

(ii) after the entry inserted by sub-paragraph (i), insert “Section 12IB”,

(iii) after the entry inserted by sub-paragraph (ii), insert “Section 12ID”,

(iv) after the entry inserted by sub-paragraph (iii), insert “Section 12IE”, and

(v) after the entry inserted by sub-paragraph (iv), insert “Section 12IF”, and

(b) in column 2—

(i) in the place corresponding to the entry inserted by paragraph (a)(i), insert “Duty to ensure appropriate staffing”,

(ii) in the place corresponding to the entry inserted by paragraph (a)(ii), insert “Duty to follow common staffing method”,

(iii) in the place corresponding to the entry inserted by paragraph (a)(iii), insert “Duties of training and consultation of staff”,

(iv) in the place corresponding to the entry inserted by paragraph (a)(iv), insert “Duty of reporting on staffing”, and

(v) in the place corresponding to the entry inserted by paragraph (a)(v), insert “Duty to have regard to Ministerial guidance on staffing”.

(12) In Part II of the schedule—

(a) in column 1, at the end, insert “Section 2 of the Health and Care (Staffing) (Scotland) Act 2019”,

(b) in column 2, in the place corresponding to the entry inserted by paragraph (a), insert “Duty to have regard to guiding principles in health care staffing and planning”.

PART 3

STAFFING IN CARE SERVICES

6 Duty on care service providers to ensure appropriate staffing

(1) Any person who provides a care service must ensure that at all times suitably qualified and competent individuals are working in the care service in such numbers as are appropriate for—

(a) the health, wellbeing and safety of service users, and

(b) the provision of high-quality care.

(2) In determining what constitutes appropriate numbers for the purposes of subsection (1), regard is to be had to—

(a) the nature of the care service,

(b) the size of the care service,

(c) the aims and objectives of the care service,

- (d) the number of service users, and
- (e) the needs of service users.

7 Training of staff

- 5 (1) Any person who provides a care service must ensure that individuals working in the care service receive—
- (a) appropriate training for the work they are to perform, and
 - (b) suitable assistance, including time off work, for the purpose of obtaining further qualifications appropriate to their work.
- 10 (2) In subsection (1)(a), “appropriate training” includes training in how to use any method for staffing required in regulations by the Scottish Ministers under section 82B(1) of the Public Services Reform (Scotland) Act 2010.

8 Ministerial guidance on staffing

- 15 (1) Any person who provides a care service must have regard to any guidance issued by the Scottish Ministers about the carrying out of its duties under sections 6 and 7.
- 15 (2) Before issuing such guidance, the Scottish Ministers must consult—
- (a) SCSWIS,
 - (b) such persons as they consider to be representative of the providers and users of care services,
 - (c) such trade unions and professional bodies as they consider to be representative of individuals working in care services, and
 - (d) such other persons as they consider appropriate.
- 20 (3) The Scottish Ministers must publish any guidance issued under this section.

9 Interpretation of sections 6 to 8

In sections 6 to 8—

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

“SCSWIS” means Social Care and Social Work Improvement Scotland,

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

30 “working in a care service”, in relation to an individual, includes—

- (a) working for payment or as a volunteer, and
- (b) working under a contract of service or apprenticeship, a contract for services or otherwise than under a contract.

10 Functions of SCSWIS in relation to staffing methods

- 35 (1) The Public Services Reform (Scotland) Act 2010 is amended as follows.

- (2) After section 82 insert—

“CHAPTER 3A

CARE SERVICES: STAFFING

82A Development of staffing methods

- 5 (1) SCSWIS may develop and recommend to the Scottish Ministers staffing methods for use by persons who provide—
- (a) care home services for adults, and
 - (b) such other care services as the Scottish Ministers may by regulations specify.
- 10 (2) In developing such methods, SCSWIS must collaborate with—
- (a) the Scottish Ministers,
 - (b) Healthcare Improvement Scotland,
 - (c) every local authority,
 - (d) every integration authority,
 - 15 (e) such persons as SCSWIS considers to be representative of the providers and users of the care services to whom the staffing methods are to apply,
 - (f) such trade unions and professional bodies as SCSWIS considers to be representative of individuals working in those care services, and
 - (g) such other persons as SCSWIS considers appropriate.
- 20 (3) In undertaking such collaboration, SCSWIS and those other persons must have regard to—
- (a) any guidance issued by the Scottish Ministers about the operation of this section, and
 - 25 (b) the guiding principles for health and care staffing set out in section 1 of the Health and Care (Staffing) (Scotland) Act 2019.
- (4) A staffing method developed and recommended under subsection (1) must include the use of staffing level tools designed to provide—
- (a) quantitative information relating to workload, based on the needs of service users, and
 - 30 (b) quantitative or qualitative information relating to professional judgement,
- in order to assist in determining the appropriate staffing levels for a care service.
- (5) A staffing method developed and recommended under subsection (1) may include, in particular, the taking into account of—
- 35 (a) the current staffing levels of a care service and any vacancies,
 - (b) the local context in which a care service is provided,
 - (c) the physical environment in which a care service is provided,
 - (d) any assessment of the quality of a care service,
 - 40 (e) the needs of the users of a care service,

- (f) comments by the users of a care service which relate to the duty imposed by section 6 of the Health and Care (Staffing) (Scotland) Act 2019,
- (g) comments by the individuals working in a care service which relate to the duty imposed by section 6 of the Health and Care (Staffing) (Scotland) Act 2019, and
- (h) the standards and outcomes applicable to care services published by the Scottish Ministers under section 50.

82B Regulations: requirement to use staffing methods

- (1) Following the development and recommendation by SCSWIS of a staffing method for use by persons who provide care services, the Scottish Ministers may by regulations require the use of that method (with or without modifications) by persons who provide those care services.
- (2) Regulations under subsection (1) may prescribe—
 - (a) the types of care settings and individuals working in a care service in relation to which, and whom, a staffing method is to be used,
 - (b) the staffing level tools for the purpose of section 82A(4), and
 - (c) the frequency at which such staffing level tools are to be used as part of a staffing method by persons who provide care services.

82C Interpretation of Chapter

In this Chapter—

“care home services for adults” means care home services provided for individuals who have reached the age of 18 years,

“care services” excludes care services provided by individuals who do not employ, or have not otherwise made arrangements with, other persons to assist with the provision of that service,

“integration authority” has the meaning given by section 59 of the Public Bodies (Joint Working) (Scotland) Act 2014,

“working in a care service”, in relation to an individual, includes—

- (a) working for payment or as a volunteer, and
- (b) working under a contract of service or apprenticeship, a contract for services or otherwise than under a contract.”.

11 Care services: consequential amendments

- (1) In the Public Services Reform (Scotland) Act 2010—
 - (a) in section 60 (grant or refusal of registration), in subsection (3)(a), after “section 78” insert “or 82B(1)”,
 - (b) in section 104 (orders and regulations: procedure), in subsection (2), for “or 78” substitute “, 78, 82B(1)”.
- (2) Regulation 15 of the Social Care and Social Work Improvement Scotland (Requirements for Care Services) Regulations 2011 (S.S.I. 2011/210) is revoked.

PART 4

GENERAL PROVISIONS

12 Ancillary provision

- 5 (1) The Scottish Ministers may by regulations make any incidental, supplementary, consequential, transitional, transitory or saving provision they consider appropriate for the purposes of, in connection with or for giving full effect to this Act.
- (2) Regulations under subsection (1) may—
- (a) modify any enactment (including this Act),
 - (b) make different provision for different purposes.
- 10 (3) Regulations under subsection (1)—
- (a) are subject to the affirmative procedure if they add to, replace or omit any part of the text of an Act,
 - (b) otherwise, are subject to the negative procedure.

13 Commencement

- 15 (1) This section and sections 12 and 14 come into force on the day after Royal Assent.
- (2) The other provisions of this Act come into force on such day as the Scottish Ministers may by regulations appoint.
- (3) Regulations under this section may—
- (a) include transitional, transitory or saving provision,
 - (b) make different provision for different purposes.
- 20

14 Short title

The short title of this Act is the Health and Care (Staffing) (Scotland) Act 2019.

Health and Care (Staffing) (Scotland) Bill

[AS INTRODUCED]

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

Introduced by: Shona Robison
On: 23 May 2018
Bill type: Government Bill

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