

Health and Care (Staffing) (Scotland) Bill

Marshalled List of Amendments selected for Stage 3

The Bill will be considered in the following order—

Sections 1 to 14

Long Title

Amendments marked * are new (including manuscript amendments) or have been altered.

Section 1

Jeane Freeman

- 1 In section 1, page 1, line 8, leave out from the second <and> to <users> in line 9

Monica Lennon

- 42 In section 1, page 1, line 10, after <care> insert <or (as the case may be) care>

Jeane Freeman

- 2 In section 1, page 1, line 11, leave out <the main purpose> and insert <those main purposes>

Jeane Freeman

- 3 In section 1, page 1, leave out line 13

Jeane Freeman

- 4 In section 1, page 2, line 10, leave out <10H> and insert <10H(1)>

Section 3

Jeane Freeman

- 5 In section 3, page 3, line 11, leave out <this section> and insert <subsection (1)>

David Stewart

- 43 In section 3, page 3, line 13, at end insert—

<(2A) In complying with the duty imposed by subsection (2), every local authority and integration authority must, in particular, take reasonable steps to satisfy itself that the person who is to provide a care service would have adequate resources for the provision of suitably qualified and competent individuals to work in the service, in such numbers as are appropriate for—

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

- (b) the provision of safe and high-quality care.
- (2B) In determining what constitutes adequate resources for the purposes of subsection (2A), regard is to be had to—
 - (a) the factors listed in section 6(2)(a) to (e), and
 - (b) the effect of securing the contract, agreement or arrangements on the resources available for the provision of all other services (including care services) for which the local authority or integration authority, as the case may be, is responsible.>

David Stewart

- 44 In section 3, page 3, line 15, leave out <subsection (2)> and insert <subsections (2) to (2B)>

Jeane Freeman

- 6 In section 3, page 3, line 26, leave out subsections (6) to (9)

Monica Lennon

- 45 In section 3, page 3, line 28, leave out <provide the Scottish Ministers with> and insert <publish>

Monica Lennon

- 46 In section 3, page 3, line 33, leave out subsections (7) to (9)

Section 4

Alex Cole-Hamilton

- 7 In section 4, page 4, line 15, leave out <and staff>

Jeane Freeman

- 8 In section 4, page 4, line 16, leave out <and services>

Alex Cole-Hamilton

- 9 In section 4, page 4, line 16, at end insert <, and
(c) in so far as it affects either of those matters, the wellbeing of staff.>

Anas Sarwar

- 47 In section 4, page 4, line 23, at end insert—

<12IAZA 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—
 - (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).>

Jeane Freeman

10 In section 4, page 4, line 32, after <of> insert <safe and>

David Stewart

48 In section 4, page 4, line 33, at end insert—

<(aa) 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,>

David Stewart

49 In section 4, page 4, line 34, leave out from the second <the> to <identified,> in line 36 and insert <such an individual>

David Stewart

50 In section 4, page 4, line 36, after <and> insert <a requirement for that individual to seek and have regard to appropriate clinical advice, as necessary, in carrying out such mitigation,>

David Stewart

51 In section 4, page 5, line 2, at end insert—

<(d) encouraging and enabling staff to use the procedures described in paragraphs (a) and (aa),>

Miles Briggs

52 In section 4, page 5, line 2, at end insert—

<(e) 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 (d), and

(f) ensuring that such individuals receive adequate time and resources to implement those arrangements.>

David Stewart

53 In section 4, page 5, line 12, leave out <the individual with lead clinical professional responsibility> and insert <an individual with lead professional responsibility (whether clinical or non-clinical) in the area>

David Stewart

54 In section 4, page 5, line 13, leave out <in the clinical professional structure>

David Stewart

55 In section 4, page 5, line 15, after <seek> insert <and have regard to>

David Stewart

56 In section 4, page 5, line 16, after <risk,> insert <including on how to mitigate it,>

David Stewart

57 In section 4, page 5, line 19, after <seek> insert <and have regard to>

David Stewart

58 In section 4, page 5, line 20, after <risk,> insert <including on how to mitigate it,>

David Stewart

59 In section 4, page 5, line 20, at end insert—

<(ca) a requirement for the arrangements put in place under paragraph (c) to escalate further, as necessary, in order to reach a final decision on the risk, including in appropriate cases by the reporting of the risk to the members of the Health Board or the Agency (as the case may be),>

Jeane Freeman

11 In section 4, page 5, line 31, leave out <or (c)> and insert <, (c) or (ca)>

Jeane Freeman

- 12 In section 4, page 5, line 33, leave out <paragraph (b) or (c)> and insert <section 12IAA(2)(b), or under paragraph (b), (c) or (ca)>

David Stewart

- 60 In section 4, page 5, line 36, at end insert—
- <(ea) a procedure for those individuals to be able to request a review of the final decision on a risk (other than a final decision made by the members of the Health Board or the Agency) made in accordance with the arrangements put in place under section 12IAA(2)(b) or, as the case may be, paragraphs (b), (c) or (ca) of this subsection,>

Miles Briggs

- 61 In section 4, page 5, line 38, at end insert—
- <(g) training individuals with lead professional responsibility (whether clinical or non-clinical) for particular types of health care, and other senior decision-makers, in how to implement the arrangements put in place under paragraphs (a) to (f), and
 - (h) ensuring that such individuals receive adequate time and resources to implement those arrangements.>

David Stewart

- 62 In section 4, page 5, line 38, at end insert—
- <12IABA Duty to have arrangements to address severe and recurrent risks**
- (1) It is the duty of every Health Board and the Agency to put and keep in place arrangements to—
 - (a) collate information relating to every risk escalated to such level as the Health Board or the Agency (as the case may be) consider appropriate in accordance with the arrangements put in place under section 12IAB(2), and
 - (b) identify and address those risks which are considered to be either or both—
 - (i) severe,
 - (ii) liable to materialise frequently.
 - (2) The arrangements under subsection (1) must, in particular, include a procedure for—
 - (a) the recording of a risk as described in subsection (1)(b),
 - (b) the reporting of any such risk, as necessary, to a more senior decision-maker, including in appropriate cases to the members of the Health Board or the Agency (as the case may be),
 - (c) the mitigation of the risk, so far as possible, and a requirement for appropriate clinical advice to be sought and had regard to in carrying out such mitigation, and

- (d) the identification of actions to prevent the future materialisation of the risk, so far as possible.>

Miles Briggs

63 In section 4, page 5, line 38, at end insert—

<12IABB Duty to seek clinical advice on staffing

- (1) It is the duty of every Health Board and the Agency to put and keep in place arrangements for—
 - (a) seeking and having regard to appropriate clinical advice in making decisions and putting in place arrangements in relation to staffing under sections 12IA to 12IABA and 12IAD to 12ID,
 - (b) recording and explaining decisions which conflict with that advice.
- (2) The arrangements under subsection (1) must, in particular, include—
 - (a) where a Health Board or the Agency (as the case may be) reaches a decision on a matter which conflicts with the clinical advice it has received—
 - (i) a procedure for the identification of any risks caused by that decision,
 - (ii) a procedure for the mitigation of any such risks, so far as possible,
 - (iii) a procedure for the notification of any such decision, and the reasons for it, to any individual who gave clinical advice on the matter,
 - (iv) a procedure for any such individual to record any disagreement with the decision made on the matter,
 - (b) a procedure for individuals with lead clinical professional responsibility for a particular type of health care to report to the members of the Health Board or the Agency (as the case may be), on at least a quarterly basis, about the extent to which that individual considers that it is complying with the duties imposed by—
 - (i) this section, and
 - (ii) sections 12IA to 12IABA and 12IAD to 12ID,
 - (c) a procedure for such individuals to—
 - (i) enable and encourage other employees to give views on the operation of this section, and
 - (ii) record such views in reports made in accordance with the arrangements put in place under paragraph (b),
 - (d) raising awareness among individuals with lead clinical professional responsibility for particular types of health care in how to implement the arrangements put in place under paragraphs (a) to (c), and
 - (e) ensuring that such individuals receive adequate time and resources to implement those arrangements.
- (3) Every Health Board and the Agency must have regard to the reports received in accordance with the arrangements put in place under subsection (2)(b).>

Alison Johnstone

- 13 In section 4, page 6, line 3, after <must> insert <take all reasonable steps to>

Jeane Freeman

- 14 In section 4, page 6, line 9, after <Health Board> insert <, relevant Special Health Board>

Alison Johnstone

- 15 In section 4, page 6, line 14, at end insert —
<(aa) any information as to variation in staffing needs caused by differences in the geographical areas for which Health Boards are responsible, for example in areas containing rural or island communities, and>

Jeane Freeman

- 16 In section 4, page 6, line 15, after <Health Board> insert <, relevant Special Health Board>

Alison Johnstone

- 17 In section 4, page 6, leave out lines 20 and 21 and insert—
<(b) the extent to which Ministers' compliance with subsection (1) enabled Health Boards, relevant Special Health Boards and the Agency to comply with the duty imposed by section 12IA.>

Jeane Freeman

- 18 In section 4, page 6, leave out lines 22 to 33 and insert—
<12IAD Duty to ensure adequate time given to clinical leaders
In complying with the duty imposed by section 12IA, every Health Board and the Agency must ensure that all individuals with lead clinical professional responsibility for a team of staff receive adequate time to discharge that responsibility and their other professional duties, including, in particular, time—
5 (a) to supervise the meeting of the clinical needs of the patients in their care,
(b) to manage, and support the development of, the staff for whom they are responsible, and
10 (c) to contribute to the delivery of safe, high-quality and person-centred health care.>

Alison Johnstone

- 18A As an amendment to amendment 18, line 5, leave out <adequate time> and insert <sufficient time and resources>

Alison Johnstone

- 18B As an amendment to amendment 18, line 10, leave out <contribute to> and insert <lead>

Alison Johnstone

- 19 In section 4, page 6, leave out lines 35 to 40 and insert—
- <In complying with the duty imposed by section 12IA, every Health Board and the Agency must ensure that its employees receive—
- (a) such training as it considers appropriate and relevant for the purposes set out in section 12IA(1)(a) and (b), and
 - (b) such time and resources as it considers adequate to undertake such training.>

Miles Briggs

- 64 In section 4, page 7, leave out lines 6 to 12

Miles Briggs

- 65 In section 4, page 7, line 20, after <Ministers> insert <(including any measures developed as part of a national care assurance framework)>

David Stewart

- 66 In section 4, page 7, leave out line 27 and insert—
- <(ic) the effect that decisions about staffing and the use of resources taken for the particular type of health care may have on the provision of other types of health care including, in particular, those to which this section does not apply,>

Miles Briggs

- 67 In section 4, page 7, line 35, leave out <process under section 12IAB(1)> and insert <processes under sections 12IAB and 12IABA>

Miles Briggs

- 68 In section 4, page 8, line 2, leave out <levels> and insert <establishment>

Miles Briggs

- 69 In section 4, page 8, line 12, at end insert—
- <(3A) For the purposes of this section, a reference to a Health Board's (or, as the case may be) the Agency's staffing establishment is a reference to the number of employees of a particular kind (or kinds) that the Board (or, as the case may be) the Agency have determined as being appropriate to deliver a type of health care mentioned in section 12IC.>

Jeane Freeman

- 20 In section 4, page 10, line 22, at end insert—
- <(ac) section 12IABA,
 - (ad) section 12IABB,
 - (ae) section 12IAD,

(af) section 12IAE,>

Jeane Freeman

- 21 In section 4, page 11, line 37, leave out <(c)> and insert <(ca)>

Jeane Freeman

- 22 In section 4, page 11, line 40, leave out <levels> and insert <establishment>

Jeane Freeman

- 23 In section 4, page 12, line 3, leave out <and 12IAB> and insert <to 12IABA>

Section 5

Jeane Freeman

- 24 In section 5, page 13, line 6, at end insert—
- <(ic) after the entry inserted by sub-paragraph (ib), insert “Section 12IABA”,
 - (id) after the entry inserted by sub-paragraph (ic), insert “Section 12IABB”,
 - (ie) after the entry inserted by sub-paragraph (id), insert “Section 12IAD”,
 - (if) after the entry inserted by sub-paragraph (ie), insert “Section 12IAE”,>

Jeane Freeman

- 25 In section 5, page 13, line 7, leave out <(ib)> and insert <(if)>

Jeane Freeman

- 26 In section 5, page 13, line 17, at end insert—
- <(ic) in the place corresponding to the entry inserted by paragraph (a)(ic), insert “Duty to have arrangements to address severe and recurrent risks”,
 - (id) in the place corresponding to the entry inserted by paragraph (a)(id), insert “Duty to seek clinical advice on staffing”,
 - (ie) in the place corresponding to the entry inserted by paragraph (a)(ie), insert “Duty to ensure adequate time given to clinical leaders”,
 - (if) in the place corresponding to the entry inserted by paragraph (a)(if), insert “Duty to ensure appropriate staffing: training of staff”,>

Jeane Freeman

- 27 In section 5, page 13, line 39, at end insert—
- <(ic) after the entry inserted by sub-paragraph (ib), insert “Section 12IABA”,
 - (id) after the entry inserted by sub-paragraph (ic), insert “Section 12IABB”,
 - (ie) after the entry inserted by sub-paragraph (id), insert “Section 12IAD”,
 - (if) after the entry inserted by sub-paragraph (ie), insert “Section 12IAE”,>

Jeane Freeman

- 28 In section 5, page 13, line 40, leave out <(ib)> and insert <(if)>

Jeane Freeman

- 29 In section 5, page 14, line 8, at end insert—
- <(ic) in the place corresponding to the entry inserted by paragraph (a)(ic), insert “Duty to have arrangements to address severe and recurrent risks”,
 - (id) in the place corresponding to the entry inserted by paragraph (a)(id), insert “Duty to seek clinical advice on staffing”,
 - (ie) in the place corresponding to the entry inserted by paragraph (a)(ie), insert “Duty to ensure adequate time given to clinical leaders”,
 - (if) in the place corresponding to the entry inserted by paragraph (a)(if), insert “Duty to ensure appropriate staffing: training of staff”,>

Jeane Freeman

- 30 In section 5, page 14, line 34, at end insert—
- <(ic) after the entry inserted by sub-paragraph (ib), insert “Section 12IABA”,
 - (id) after the entry inserted by sub-paragraph (ic), insert “Section 12IABB”,
 - (ie) after the entry inserted by sub-paragraph (id), insert “Section 12IAD”,
 - (if) after the entry inserted by sub-paragraph (ie), insert “Section 12IAE”,>

Jeane Freeman

- 31 In section 5, page 14, line 35, leave out <(ib)> and insert <(if)>

Jeane Freeman

- 32 In section 5, page 15, line 4, at end insert—
- <(ic) in the place corresponding to the entry inserted by paragraph (a)(ic), insert “Duty to have arrangements to address severe and recurrent risks”,
 - (id) in the place corresponding to the entry inserted by paragraph (a)(id), insert “Duty to seek clinical advice on staffing”,
 - (ie) in the place corresponding to the entry inserted by paragraph (a)(ie), insert “Duty to ensure adequate time given to clinical leaders”,
 - (if) in the place corresponding to the entry inserted by paragraph (a)(if), insert “Duty to ensure appropriate staffing: training of staff”,>

Jeane Freeman

- 33 In section 5, page 15, line 26, at end insert—
- <(ic) after the entry inserted by sub-paragraph (ib), insert “Section 12IABA”,
 - (id) after the entry inserted by sub-paragraph (ic), insert “Section 12IABB”,
 - (ie) after the entry inserted by sub-paragraph (id), insert “Section 12IAD”,

(if) after the entry inserted by sub-paragraph (ie), insert “Section 12IAE”,>

Jeane Freeman

34 In section 5, page 15, line 27, leave out <(ib)> and insert <(if)>

Jeane Freeman

35 In section 5, page 15, line 37, at end insert—

<(ic) in the place corresponding to the entry inserted by paragraph (a)(ic), insert “Duty to have arrangements to address severe and recurrent risks”,

(id) in the place corresponding to the entry inserted by paragraph (a)(id), insert “Duty to seek clinical advice on staffing”,

(ie) in the place corresponding to the entry inserted by paragraph (a)(ie), insert “Duty to ensure adequate time given to clinical leaders”,

(if) in the place corresponding to the entry inserted by paragraph (a)(if), insert “Duty to ensure appropriate staffing: training of staff”,>

Section 5A

Jeane Freeman

36 In section 5A, page 16, line 22, at end insert—

- <(ca) section 12IABA,
- (cb) section 12IABB,
- (cd) section 12IAD,
- (ce) section 12IAE,>

Miles Briggs

70 In section 5A, page 18, line 17, leave out from <collaboration> to <persons> and insert <collaboration—

- (a) HIS must have regard to—
 - (i) such guidance, published by professional bodies of the kind described in subsection (3)(g) or by other bodies with experience in relevant fields, as HIS considers appropriate, and
 - (ii) relevant clinical evidence and research,
- (b) HIS and the persons mentioned in subsection (3)(a) to (j)>

Section 6

Alex Cole-Hamilton

37 In section 6, page 20, line 14, leave out <and staff>

Jeane Freeman

- 38 In section 6, page 20, line 15, leave out <and services>

Section 7

Monica Lennon

- 71 In section 7, page 20, line 29, at end insert—
<() reimbursement for travel costs reasonably incurred in the course of the person’s work.>

Monica Lennon

- 72 In section 7, page 20, line 29, at end insert—
<() reimbursement for clothing costs reasonably incurred in the course of the person’s work.>

Monica Lennon

- 73 In section 7, page 20, line 29, at end insert—
<() reimbursement for the costs of registration fees reasonably incurred in the course of the person’s work.>

Monica Lennon

- 74 In section 7, page 20, line 29, at end insert—
<() reimbursement for the cost of training under this section.>

Monica Lennon

- 75 In section 7, page 20, line 29, at end insert—
<(c) a living wage for the work they are to perform.>

Monica Lennon

- 76 In section 7, page 20, line 29, at end insert—
<(d) an appropriate contract for the work they are to perform.>

Monica Lennon

- 77 In section 7, page 20, line 32, at end insert—
<() In subsection (1)(c), a “living wage” means remuneration which is sufficient to ensure an acceptable standard of living.>

Monica Lennon

- 78 In section 7, page 20, line 32, at end insert—

<() In subsection (1)(d), “an appropriate contract” means a contract which includes clearly defined hours of work and is not a zero hours contract (construed in accordance with section 27A(1) of the Employment Rights Act 1996).>

After section 7

Jeane Freeman

39 After section 7, insert—

<Annual report on staffing in care services

(1) As soon as reasonably practicable after the end of each financial year, the Scottish Ministers must publish, and lay before the Scottish Parliament, a report setting out—

- 5 (a) a summary of how the duties imposed by sections 3 and 6 on persons who provide, plan and secure care services are being discharged,
- (b) the effect that staffing levels in care services have on the discharge of those duties, and
- 10 (c) the steps that Ministers have taken to support staffing levels in care services in order to assist the discharge of those duties.

(2) In subsection (1), “staffing levels in care services” means the numbers of the following types of individuals working in care services—

- (a) registered nurses,
- (b) medical practitioners, and
- 15 (c) such other kinds of care professionals as the Scottish Ministers consider relevant to the discharge of the duties imposed by sections 3 and 6.

(3) In preparing a report under subsection (1), the Scottish Ministers must have regard to—

- (a) any review carried out by SCSWIS under section 82BAA(1) of the Public Services (Reform) (Scotland) Act 2010,
- 20 (b) any information from persons who provide care services on the use of staffing methods prescribed under section 82B of that Act,
- (c) any performance report published by an integration authority under section 42(4) of the Public Bodies (Joint Working) (Scotland) Act 2014,
- 25 (d) any report or other information provided to the Scottish Ministers by the Scottish Social Services Council under paragraph 10 of schedule 2 of the Regulation of Care (Scotland) Act 2001,
- (e) any information provided by local authorities which relates to—
- (i) how they carry out the duties imposed on them by section 3 of this Act, and
- (ii) how persons who provide care services carry out the duties listed in section 30 3(2)(b) of this Act,

including, in particular, any information relating to risks caused by staffing levels which local authorities have previously reported to the Scottish Ministers, and

(f) any other information which the Scottish Ministers consider relevant.>

Monica Lennon

39A As an amendment to amendment 39, line 5, leave out <and 6> and insert <, 6 and 7>

Alison Johnstone

39B As an amendment to amendment 39, line 10, at end insert <, and

() how the matters mentioned in paragraphs (a), (b) and (c) will be taken into account in determining the future supply of—

(i) registered nurses,

(ii) medical practitioners, and

(iii) such other kinds of care professionals as the Scottish Ministers consider relevant to the discharge of the duties imposed by sections 3 and 6.>

Monica Lennon

39C As an amendment to amendment 39, line 10, at end insert <, and

() the steps that Ministers have taken to ensure that funding is available to any person who provides a care service in order to assist the discharge of those duties.>

Monica Lennon

39D As an amendment to amendment 39, line 16, leave out <and 6> and insert <, 6 and 7>

Section 10

David Stewart

79 In section 10, page 22, line 28, at end insert—

<(4A) A staffing method developed and recommended under subsection (1) may require persons who provide care services to put and keep in place risk management procedures that are appropriate to the care services provided.>

Miles Briggs

80 In section 10, page 23, line 3, at end insert—

<(ga) recommendations of senior care sector or health care professionals with qualifications and experience that are appropriate to the care services in question,>

Miles Briggs

81 In section 10, page 23, line 5, at end insert—

<(i) such indicators or measures relating to the quality of care as SCSWIS considers appropriate,>

Miles Briggs

82 In section 10, page 23, line 5, at end insert—

- <(j) such guidance, published by professional bodies of the kind described in subsection (2)(f) or by other bodies with experience in relevant fields, as SCSWIS considers appropriate, and
- (k) such clinical evidence and research as SCSWIS considers appropriate.>

Jeane Freeman

40 In section 10, page 23, line 5, at end insert—

- <(6) The Scottish Ministers may by regulations—
 - (a) amend subsection (5) so as to add, amend or remove a matter for the time being listed there,
 - (b) disapply a matter listed in subsection (5) in relation to a type of care service.>

Section 11

Jeane Freeman

41 In section 11, page 24, line 28, after <78,> insert <82A(6),>

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