



Health & Care (Staffing) (Scotland) Act 2019
Briefing
July, 2019

This briefing outlines the content of the above legislation and highlights – ***in bold*** - those sections of the Act which appear particularly pertinent to AHPs.

The majority of the brief has been drawn from a technical brief issued by the Scottish Government shortly after the Act passed through Parliament.

The Act has commenced but many of its provisions will only come into force when Scottish Ministers announce a timetable for implementation including the development of statutory guidance and passing of regulations (secondary legislation).

The Act can be read in full at [LINK](#).

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Section A:
THE HEALTH AND CARE (STAFFING) (SCOTLAND) ACT 2019
Executive Summary

The aim of this legislation is to provide a statutory basis for the provision of appropriate staffing in health and care service settings, enabling safe and high quality care and improved outcomes for service users. It will do this by ensuring that the right people with the right skills are in the right place at the right time creating better outcomes for patients and service users, and supporting the wellbeing of staff.

The legislation does not seek to prescribe a uniform approach to workload or workforce planning. Instead it enables the development of suitable approaches for different settings and different professional groups.

The effective application of this legislation will:

- provide assurance that staffing is appropriate to support high quality care, identify where improvements in quality are required and determine where staffing has impacted on quality of care
- support an open and honest culture where clinical/professional staff are engaged in relevant processes and informed about decisions relating to staffing requirements
- enable further improvements in workforce planning by strengthening and enhancing arrangements already in place to support transparency in staffing and employment practice across Scotland and through the use of, and outputs from, the Common Staffing Method and associated decision making processes
- ensure the **multi-disciplinary clinical voice** is heard at all levels by ensuring arrangements are in place to seek and take appropriate clinical advice in making decisions and putting in place arrangements in relation to staffing including: identification of any risks; mitigation of any such risks, so far as possible; notification of decisions and the reasons why and a procedure to record any disagreement with the decision made

The **Act leads with a set of guiding principles** which health and care services must have regard to when carrying out their duty to ensure appropriate staffing under the Act. **The key principle for AHPs is that that “staffing for health and care services is to be arranged while ... promoting multi-disciplinary services as appropriate”.**

Specific requirements for Health Boards, Healthcare Improvement Scotland, Care Service providers, Care Inspectorate and Scottish Ministers are summarised below.

Health Boards and the Common Services Agency (NSS) are required 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 appropriate for the health, wellbeing and safety of patients or service users, and the provision of high-quality care.**
- **Have regard to the guiding principles**, including when contracting with third party providers for the provision of services.
- **Have procedures for assessing staffing requirements in real-time, identify and escalate risk across all clinical settings and staff groups.**
- **Seek and have regard to appropriate clinical advice in decisions relating to staffing**
- Report on high cost agency use
- **Ensure adequate time and resources are given to all clinical leaders to discharge their leadership role**
- **Ensure employees receive appropriate training to undertake their role**
- Follow a specified common staffing method **where defined workload planning tools exist (NB: No tools yet exist covering SLTs and / or any other AHP)** and ensure the output from the method is used to inform decisions about staffing levels
- Train staff in the common staffing method where appropriate
- inform staff of how the common staffing method has been used and the staffing decisions reached
- Report annually to Scottish Ministers how they have met the requirements in the legislation
- **Provide assistance to HIS, as required, including providing information, to enable HIS to perform its functions.**

Healthcare Improvement Scotland is required to:

- Monitor the compliance of Health Boards with duties of the legislation

- Monitor and review the common staffing method
- **Monitor existing and develop new staffing level tools and professional judgement tools as required**
- **Consider a multi-disciplinary approach in development of new and existing staffing level tools and professional judgement tools**
- HIS may require Health Boards to provide them with information

Care Service providers are required to:

- **Ensure that at all times suitably qualified and competent individuals are working in such numbers as are appropriate for the health, wellbeing and safety of service users, and the provision of high-quality care.**
- **Have regard to the guiding principles**
- To ensure staff are appropriately trained for the work they perform

Care Inspectorate may:

- **Develop and recommend staffing methods for care home services for adults and any other care services as the Scottish Ministers may by regulations specify. Ministers can then make regulations to require care service providers to use such methods.**
- Review any staffing methods prescribed for use by regulations

Scottish Ministers are required to:

- **Take all reasonable steps to ensure there are sufficient number of clinicians available to enable Health Boards to fulfil the duty to ensure appropriate numbers**
- **Collate Health Board reports and lay a combined report and accompanying statement before the Scottish Parliament annually**
- Lay a report before the Scottish Parliament on how duties in the Act have been undertaken by care service providers and commissioners of care services.
- Issue guidance setting out further detail around the requirements contained within the Act
- **May, by regulations, amend the common staffing method and the areas covered by it and specify tools to be use as part of it.**
- May require care service providers to use specified staffing methods and extend the Care Inspectorate's function of developing methods to care services in addition to care homes for adults.

The Health and Care (Staffing) (Scotland) Bill was unanimously passed by the Scottish Parliament on 2 May 2019 and received Royal Assent on 6 June 2019.

Section B

Outline of the Act

The Act comprises of 4 parts;

Part 1 Guiding principles for health and care staffing

Part 2 Staffing in the NHS

Part 3 Staffing in Care Services

Part 4 General Provisions

Part 1 – Guiding principles for health and care staffing

The Act leads with a set of principles which Health Boards, the Agency and care service providers must have regard to when carrying out their duty to ensure appropriate staffing under the Act.

These principles are:

- that the main purposes of staffing for health and care services are to provide safe and high-quality services and to ensure the best health or care outcomes for service users.
- that staffing for health and care services is to be arranged while -
 - Improving standards and outcomes for service users;
 - Taking account of the particular needs, abilities, characteristics and circumstances of different service users;
 - Respecting the dignity and rights of service users;
 - Taking account of the views of staff and service users;
 - Ensuring the wellbeing of staff;
 - Being open with staff and service users about decisions on staffing;
 - Allocating Staff efficiently and effectively;
 - **Promoting multi-disciplinary services as appropriate.**

These guiding principles must also be considered when planning or commissioning services from a third party provider, as well as the need for that provider to have appropriate staffing in place.

The Act sets out, for the first time in the UK, a statutory definition of “multi-disciplinary services”. It states

“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,

This means anyone with responsibilities under this Act must take a multi-disciplinary perspective to workload (and workforce) planning. Health Boards will have to report to the Cabinet Secretary on how they are promoting multi-disciplinary working annually. Both of these innovations provide an obvious boost to AHP positioning strategically and operationally.

Part 2 – Staffing in the NHS

1. Duty to ensure appropriate staffing

Health Boards and the Agency are required 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-

- **The health, wellbeing and safety of patients and staff,**
- **The provision of safe and high-quality health care and services, and**
- **Insofar as it affects either of those matters, the wellbeing of staff.**

The Act goes on to describe what needs to be considered by Boards when deciding on appropriate staffing levels:

- **The nature and kind of healthcare provision**
- **The number of patients being provided healthcare in the service**
- **The local context in which the service is being delivered**
- **The needs of patients in the service**
- **Appropriate clinical advice**

In practice Health Boards and the Agency will be required to evidence how they have considered both the guiding principles and the considerations detailed above when making decisions on staffing requirements **across all clinical/professional staff groups and settings.**

2. Duty to ensure appropriate staffing: agency workers

This duty sets out that Health Boards and the Agency **should not pay more than 150% of the amount that would be paid to a full-time equivalent employee, when securing the services of an agency worker.** (More detail on this in Act)

3. Duty to have real-time staffing assessment in place

This duty requires Health Boards and the Agency to put in place arrangements for the identification of risk relating to staffing which affects the health, wellbeing or safety of patients by any member of staff and possible mitigation of that risk by the individual with lead professional responsibility where the risk is identified. Health Boards and the Agency are also required to raise awareness amongst staff and encourage use of the procedures, and train those who will be implementing the arrangements, as well as ensuring they have adequate time and resource to implement the procedures.

4. Duty to have risk escalation process in place

This duty requires Health Boards and the Agency to put in place and keep arrangements for escalation of risks which have not been mitigated under the real time assessment process. (More detail on this in Act)

5. Duty to have arrangements to address severe and recurrent risk

Health Boards and the Agency must put in place arrangements to collate risks that have been escalated to such a level as they consider appropriate, and to identify severe or frequently recurring risks and record and report these as necessary, including to Board level where appropriate. Boards must mitigate these so far as possible and identify actions to prevent recurrence where possible. This will ensure Boards are aware of all severe risks and of trends of frequently recurring risks to be identified and the need for longer term mitigation to be put in place to be assessed.

6. Duty to seek clinical advice on staffing

Health Boards and the Agency must put and keep in place arrangements to ensure appropriate clinical advice is sought and taken into account when making decisions and putting in place arrangements in relation to staffing. These arrangements apply at Board level and at all levels throughout the organisation. As such **when a Health Board makes decisions in relation to staffing at Board level they must ensure the Nurse and Medical Directors have provided clinical advice and the advice provided is taken into account in decisions. Where decisions are made that are contrary to that advice the Board will be required to explain the decision, identify any risks that the decision may cause, any mitigating they have put in place and how they will monitor the risk going forward.**

Boards must also have procedures in place for those who provided the clinical advice to record disagreement with decisions made that are contrary to the advice given. They must also raise awareness of the procedure amongst individuals with lead clinical responsibility and ensure adequate time and resource is available to implement those arrangements.

Individuals with lead clinical responsibility for a particular type of health care must report to the Health Boards and the Agency on at least a quarterly basis about the extent to which that individual considers the Board is complying with the duties set out in

sections 12IA to 12IE and 12IH to 12IL of the Act. In practice this will mean that the Medical and Nurse Directors will need to report to the Board quarterly on each aspect of the Act which includes their assessment of how well the requirements are being achieved, and they can report more frequently if they have any concerns. The Board must have regard to these reports.

- 7. Duty to ensure appropriate staffing: number of registered healthcare professionals**
Scottish Ministers must take all reasonable steps to ensure that there is a sufficient number of registered nurses, registered midwives and medical practitioners (and such other types of employee as they may by regulations prescribe), and in taking these steps they must have regard to the number of people training for those professions, variation in staffing needs caused by differences in geographical areas for which Health Boards are responsible for and information provided by Health Boards or the Agency about how they carried out duties under the Act. Scottish Ministers must report to Parliament on this duty.

Note: AHPFS are seeking early development of regulations so that HCPC registered clinicians fall under this duty too.

- 8. Duty to ensure adequate time given to clinical leaders**
Health Boards and the Agency must ensure that all individuals with lead clinical professional responsibility for a team of staff receive sufficient time and resources to undertake their professional and organisational responsibilities, including their overall supervisory role in meeting the clinical needs of the patients in their care, managing and supporting the development of their staff and to lead the delivery of safe, high-quality and person-centred health care. In practice **Health Boards and the Agency will be required to provide evidence that clinical team leaders are given sufficient time to undertake their role.** This will allow for flexibility in the amount of time afforded to this role depending on the size and type of team and the local context in which it operates.

- 9. Duty to ensure appropriate staffing: training of staff**
Health Boards and the Agency must ensure that its employees receive appropriate training as it considers appropriate and relevant to ensure the health, wellbeing and safety of patients and the provision of safe and high-quality health care. This must be supported by adequate time and resources. This will ensure professional development of staff in their role.

- 10. Duty to follow common staffing method**
In settings where a workload tool has been developed Health Boards and the Agency will be required to use a more detailed method for determining staffing establishments which is described as the common staffing method. This will require Boards to:

- Apply the specialty specific workload tool
- Apply the professional judgement tool
- Take account of:
 - quality measures
 - local context
 - the role and professional duties of any individual with lead clinical professional responsibility for the clinical area
 - current staffing levels and skill mix
 - the impact of decisions on other health care settings/staff groups
 - any assessment by Healthcare Improvement Scotland or other relevant assessments
 - comments from employees and service users relating to staffing

- patient needs
- clinical advice
- experience of using the real time staffing assessment and risk escalation processes
- Identify any risk with current staffing levels and take steps to mitigate that risk
- Having followed all the above steps, decide what changes, if any, are needed to staffing establishments (including whether any changes are needed to the way the service is provided).

Regulations will specify the exact tools to be used and determine the minimum frequency with which the common staffing method should be used and this may differ for different services. Guidance will determine circumstances where the common staffing method should be applied more frequently e.g. following significant service change, significant change in client group needs or where there is a significant change in outcome measures.

Boards will also have a responsibility for:

- **Encouraging and supporting staff to give views on staffing arrangements and take these views into account as part of the common staffing methodology**
- Train staff in the use of the common staffing method
- Ensure staff have adequate time to use the common staffing method
- Provide feedback to staff on the decisions taken as a result of applying the common staffing method

In practice Health Boards will be required to ensure they have governance processes in place which will enable:

- Application of the common staffing method in all areas where it applies with the minimum frequency determined in regulations
- **Provision of appropriate clinical advice at all levels of decision making (this will include at NHS Board level)**
- **Identification, mitigation and escalation of risk on an organisation wide basis**
- **Identification of redesign opportunities**
- **Robust internal reporting and prioritisation processes**
- **Appropriate staff engagement, training and communication**

This robust evidence based approach to determining staffing will provide assurance that staffing is appropriate to support high quality care, identify where improvements in quality are required and determine where staffing has impacted on quality of care

11. Reporting on staffing

Health Boards and the Agency will be required to publish and submit to Scottish Ministers a report annually setting out how it has carried out its duties under the Act. Following receipt of such reports Scottish Ministers must collate all Health Board reports submitted to them and produce a combined report for the year. This report must be laid before the Scottish Parliament together with an accompanying statement setting out how they plan to or have taken into account the information contained in the reports in developing and implementing policies for staffing of the health service.

12. Ministerial guidance on staffing

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 the Act. **This guidance will be written in collaboration with stakeholders prior to full commencement of the Act.**

NOTE: AHPFS are directly represented on the Scottish Government Staffing Act Programme Board

13. Healthcare Improvement Scotland (HIS) role in relation to the Health and Care (Staffing) (Scotland) Act 2019

HIS must monitor the discharge of duties by every Health Board, relevant Special Health Board and the Agency in relation to the Act. HIS are also required to;

- Monitor and review the common staffing method
- Monitor existing staffing tools and recommend their revocation or replacement where they consider they are no longer effective. They may also develop and recommend new or revised tools.
- **Consider a multi-disciplinary approach when reviewing existing and developing new staffing tools**

(More detail on this in Act).

NOTE: AHPFS are seeking an early meeting with HIS leaders to discuss how HIS intend to implement guiding principles on multi-disciplinary approaches and duty set out above.

Part 3 – Staffing in Care Services

1. Duty on care service providers to ensure appropriate staffing

Care service providers will have a duty to ensure that at all times suitably qualified and competent individuals are working in the care service in such numbers as are appropriate for:

- **The health, wellbeing and safety of service users,**
- **The provision of safe and high quality care , and**
- **The wellbeing of staff in so far as it affects the health wellbeing or safety of service users or the provision of safe high quality care**

In determining what constitutes appropriate numbers care service providers must take regard of:

- **The nature of the care service**
- **The size of the care service,**
- **The aims and objectives of the care service**
- **The number of service users, and**
- **The needs of service users**

2. Training of staff

Care service providers will be required to ensure that individuals working in the care service receive:

- **Appropriate training for the work they perform and**
- **Suitable assistance, including time off work, for the purpose of obtaining further qualifications appropriate to their work**

3. Annual report on staffing in care services

Scottish Ministers will be required to publish and lay before the Scottish Parliament a report annually which details:

- **A summary of how the duties imposed on care service providers, planners and commissioners of care have been discharged**
- **The effect that staffing levels in care services have had on how the duties have been discharged**
- **The steps Ministers have taken to support staffing levels in care services in order to assist discharge of the duties**

- How the information detailed above will be taken into account when determining the future supply of registered nurses, medical practitioners and other care professionals as the Scottish Ministers consider relevant
- The steps that Ministers have taken to ensure funding is available to care service providers

4. Ministerial guidance on staffing

Every care service provider must have regard to any guidance issued by the Scottish Ministers about the carrying out of its duties under the Act. This guidance will be written in collaboration with stakeholders prior to full commencement of the Act.

5. Development of staffing methods

SCSWIS (Care Inspectorate) may develop and recommend to Ministers staffing methods for use in care home services for adults, and such other care services as Scottish Ministers specify in regulations. In developing such methods the Care Inspectorate must collaborate with

- Scottish Ministers
- Healthcare Improvement Scotland
- Scottish Social Services Council
- Every Health Board
- Every Local Authority
- Every Integration Authority
- Representatives of care providers and service users
- **Trade unions and professional bodies**
- Such other persons as the Care Inspectorate considers appropriate

In developing a method the Care Inspectorate must:

- **Have regard to guidance produced by Scottish Ministers and the guiding principles for health and care staffing set out in Part 1 of the Act**

A staffing method developed and recommended must:

- Include the use of quantitative information relating to workload, based on the needs of service users, and qualitative and quantitative information in relation to professional judgement

The staffing method developed may require care service providers to

- Put in place risk management procedures that are appropriate to the care services provided
- Take account of current staffing levels and any vacancies
- The physical environment in which the care service is provided
- **Any assessment of quality of care services provided**
- **The needs of service users**
- **Comments by care service users or their representatives which relate to staffing**
- **Recommendations of senior care sector or health care professionals with qualifications and experience that are appropriate to the care services being provided**
- **Standards and outcomes applicable to care service being provided**
- **Indicators of quality of care as the Care Inspectorate consider appropriate**
- **Guidance published by professional bodies relevant to the care services provided**
- **Clinical evidence and research the Care Inspectorate consider appropriate**

6. Regulations: requirement to use staffing methods

Following development and recommendation by the Care Inspectorate on staffing methods Scottish Ministers may by regulations require the use of that method by care service providers.

Regulations may prescribe:

- The types of care settings in which the staffing method should be used
- The minimum frequency by which the method should be used
- The staffing level tool that should be used

7. Review and redevelopment of staffing methods

The Care Inspectorate may:

- Carry out reviews of the effectiveness of any staffing method that has been prescribed by Ministers from time to time as they consider appropriate
- Recommend to Ministers revoking of a method if it is considered no longer effective
- Recommend to Ministers revised methods

Scottish Ministers may direct the Care Inspectorate to develop a revised staffing method for use in relation to a particular kind of care provision

8. Review of duty on care service providers to ensure appropriate staffing

The Care Inspectorate may carry out reviews as it considers appropriate of the effectiveness of the duty on care service providers to ensure appropriate staffing and having done so publish a report to Scottish Ministers on the operation of the duty.

9. Duty to consider multi-disciplinary staffing tools

When the Care Inspectorate is developing a staffing level tool as part of a staffing method it must consider whether the tool should be of a multi-disciplinary nature and where this is the case recommend to Scottish Ministers that the tool should be prescribed for use with the relevant staff groups.

Section C Next steps for the Act

RCSLT is an active member of the Allied Health Professions Federation Scotland (AHPFS). The AHPFS is an alliance of all the AHP professional bodies operating in Scotland.

The Act was heavily influenced through the active lobbying of AHPFS members including RCSLT Scotland Team, CSP, BDA, CoP and RCOT.

AHPFS have been represented on the Scottish Government Staffing Bill Programme Board (now finished). The board has discussed the implementation timetable for the Act which has still to be confirmed at time of writing.

Going forward AHPFS:

- Continue to be in contact with the Scottish Government Bill Team.
 - Are seeking early meetings with Healthcare Improvement Scotland to ensure adequate AHP input into their work on monitoring Health Boards and the review of both current tools and development of new workload tools. AHPFS anticipate development of AHP relevant tools will be in years rather than months.
 - Hope to work collaboratively with Scotland's AHP Directors to influence rapid application of a multidisciplinary approach to workload and workforce planning.
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Section D **Relevant Policies and Resources**

[Planned Ward Nursing – Legacy or Design?](#)

Audit Scotland, 2002

[Nursing & Midwifery Workload & Workforce Planning Project](#)

Scottish Executive Health Department, 2004

[Mid Staffordshire NHS Foundation Trust Public Inquiry](#)

Chaired by Robert Francis QC, National Archives, 2013

[A Promise to Learn – A Commitment to Act](#)

Professor Don Berwick, Department of Health and Social Care, 2013

[The Vale of Leven Hospital Inquiry](#)

Rt Hon Lord MacLean, Scottish Government, 2014

[Freedom to Speak Up](#)

Sir Robert Francis QC, Independent Review, 2015

[Health & Social Care Delivery Plan](#)

Healthcare Quality & Improvement Directorate, Scottish Government, 2016

[Nurse Staffing Levels \(Wales\) Act 2016](#)

[Health and Care \(Staffing\) \(Scotland\) Act 2019](#)