# Health and Care (Staffing) (Scotland) Act 2019

**2019 asp 6**

## 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—

(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) **[**[F1], (b)**]** 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.

**12ID Duty to have risk escalation process in place**

(1) It is the duty of every Health Board and the Agency to put and keep in place arrangements for the escalation of any risk—

(a) identified during the real-time assessment of its staffing levels in accordance with arrangements put in place under section 12IC, and

(b) which it has not been possible to mitigate in accordance with the arrangements put in place under that section.

(2) The arrangements under subsection (1) must, in particular, include—

(a) a procedure for the initial reporting of a risk as described in subsection (1), by an individual with lead professional responsibility (whether clinical or non-clinical) in the area where the risk was identified, to a more senior decision-maker,

(b) a requirement for any such decision-maker to seek and have regard to appropriate clinical advice, as necessary, in reaching a decision on the risk, including on how to mitigate it,

(c) a procedure for the onward reporting of the risk, as necessary, to a more senior decision-maker in turn, and a requirement for that decision-maker in turn to seek and have regard to appropriate clinical advice, as necessary, in reaching a decision on the risk, including on how to mitigate it,

(d) 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),

(e) a procedure for the notification of every decision made following the initial report, and the reasons for it, to—

(i) any individual who was involved in identifying the risk in accordance with the arrangements put in place under section 12IC(2)(a),

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(ii) any individual who was involved in attempting to mitigate the risk in accordance with the arrangements put in place under section 12IC(2)(c),

(iii) any individual who was involved in reporting the risk in accordance with the arrangements put in place under paragraph (a), (c) or (d) of this subsection, and

(iv) any individual who gave clinical advice in accordance with the arrangements put in place under section 12IC(2)(c), or under paragraph (b), (c) or (d) of this subsection,

(f) a procedure for those individuals to record any disagreement with any decision made following the initial report,

(g) 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 12IC(2)(c) or, as the case may be, paragraphs (b), (c) or (d) of this subsection,

(h) raising awareness among staff about the procedures described in paragraphs (a) to **[**[F2](g)**]**,

(i) 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 (h), and

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

**12IE 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 12ID(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.

### 12IF 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 12IE and 12IH to 12IL,

(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 12IE and 12IH to 12IL,

(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).

### 12IG Duty to ensure appropriate staffing: number of registered healthcare professionals etc.

(1) The Scottish Ministers must take all reasonable steps to ensure that there is a sufficient number of—

(a) registered nurses,

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(b) registered midwives,

(c) medical practitioners, and

(d) such other types of employees as the Scottish Ministers may by regulations prescribe,

available to every Health Board, relevant Special Health Board and the Agency to enable the Health Board and the Agency to comply with the duty in section 12IA.

(2) In fulfilling their obligations under subsection (1), the Scottish Ministers must have regard to—

(a) the number of people training for professions mentioned in or by virtue of subsection (1) in Scotland,

(b) 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

(c) any information provided to them by a Health Board, relevant Special Health Board or the Agency about how it has carried out its duties under this Act.

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

(a) how they have complied with subsection (1), and

(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.

**12IH 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 sufficient time and resources to discharge that responsibility and their other professional duties, including, in particular, time—

(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

(c) to lead the delivery of safe, high-quality and person-centred health care.

**12II Duty to ensure appropriate staffing: training of staff**

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.

### 12IJ Duty to follow common staffing method

(1) In relation to health care of a type mentioned in section 12IK, a Health Board or the Agency (as the case may be) must, no less often than at the frequency specified in regulations by the Scottish Ministers, use 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 (including any measures developed as part of a national care assurance framework),

(c) takes into account—

(i) its current staffing levels and any vacancies,

(ii) the different skills and levels of experience of its employees,

(iii) the role and professional duties, in particular, of any individual with lead clinical professional responsibility for the particular type of health care,

(iv) 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,

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

(vi) patient needs,

(vii) appropriate clinical advice,

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

(ix) experience gained from using the real-time assessment arrangements under section 12IC(1) and the risk escalation processes under sections 12ID and 12IE,

(x) comments by patients, and by individuals who have a personal interest in their health care (for example family members and carers within the meaning of section 1 of the Carers (Scotland) Act 2016), which relate to the duty imposed by section 12IA, and

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

(d) identifies and takes all reasonable steps to mitigate any risks, and

(e) having followed the steps described in paragraphs (a) to (d), decides what changes (if any) are needed as a result to its staffing establishment, and to the way in which it provides health care.

(3) The Scottish Ministers may by regulations prescribe—

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(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, and

(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.

(4) 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 12IK.

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

**12IK 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 any one of the kinds of locations and by any one of the kinds of employees listed in the corresponding entries in the second and third columns.

| *Type of health care* | *Location* | *Employees* |
|---|---|---|
| Adult inpatient provision | Hospital wards with 17 occupied beds or more on average | Registered nurses |
| Clinical nurse specialist provision | Hospitals<br>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<br>Medical practitioners |
| Maternity provision | Hospitals<br>Community settings | Registered midwives |
| Mental health and learning disability provision | Mental health units in hospitals<br>Learning disability units in hospitals | Registered nurses |
| Neonatal provision | Neonatal units in hospitals | Registered midwives<br>Registered nurses |

| | | |
|---|---|---|
| Paediatric inpatient provision | Paediatric wards in hospitals | Registered nurses |
| Small ward provision | Hospital wards with 16 occupied beds or fewer on average | 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 individuals providing care for patients and acting under the supervision of, or discharging duties delegated to the individual by, the registered nurse, registered midwife or medical practitioner (as the case may be).

(3) But those references do not include individuals who are engaged in a course of studies in order to be admitted to—
  (a) the register of members maintained by the Nursing and Midwifery Council under section 60 of the Health Act 1999, or
  (b) the register of medical practitioners maintained by the General Medical Council under section 2 of the Medical Act 1983 (with the exception of persons who are already provisionally registered under section 15 of that Act).

(4) The Scottish Ministers may by regulations amend subsections (1) to (3) so as to add, remove, or change the description of a type of health care, including where and by whom it is provided (for example, so as to add to the third column of the table in subsection (1) employees of a kind included in the register of members maintained by the Health and Care Professions Council under section 60 of the Health Act 1999).

**12IL Training and consultation of staff**

In complying with the duty imposed by section 12IJ, every Health Board and the Agency must—
  (a) encourage and support its employees to give views on its staffing arrangements for the types of health care described in section 12IK,
  (b) take into account and use any such views it receives to identify best practice, and areas for improvement, in relation to such staffing arrangements,
  (c) train employees (including, in particular, employees of a type mentioned in the third column of the table in section 12IK(1)) using the common staffing method on how to use it,
  (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 12IK about its use of the common staffing method, including about—
    (i) the results from using the staffing level tool and the professional judgement tool under paragraph (a) of section 12IJ(2),

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(ii) the steps taken under paragraphs **[**[F3](b), (c) and (d)**]** of that subsection, and

(iii) the results of its decision under paragraph (e) of that subsection.

**12IM Reporting on staffing**

(1) Before the end of the period of 1 month beginning with the last day of each financial year, every Health Board and the Agency must publish, and submit to the Scottish Ministers, a report setting out how during that financial year it has carried out its duties under—

(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 etc. in health care staffing and planning),

(b) section 12IC,

(c) section 12ID,

(d) section 12IE,

(e) section 12IF,

(f) section 12IH,

(g) section 12II,

(h) section 12IJ, and

(i) section 12IL.

(2) Following the receipt of such reports from every Health Board and the Agency and before the beginning of the next financial year, the Scottish Ministers must—

(a) collate the reports submitted to them under subsection (1) into a combined report for the year to which the reports relate,

(b) lay that combined report before the Scottish Parliament, and

(c) lay an accompanying statement setting out how they have taken into account and plan to take into account, in their policies for the staffing of the health service, the information included in the combined report.

(3) Information provided under subsection (1) must set out—

(a) whether each Health Board or the Agency has faced any challenges or risk in carrying out its duties under—

(i) 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 etc. in health care staffing and planning),

(ii) section 12IJ, and

(iii) section 12IL, and

(b) the steps the Health Board or the Agency will take to address such challenges.

(4) As soon as reasonably practicable after the end of each financial year, the Scottish Ministers must publish a report (in such manner as they consider appropriate) setting out how each Health Board and the Agency has carried out its duties under—

(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 etc. in health care staffing and planning),

(b) section 12IJ, and

(c) section 12IL.

(5) A report under subsection (4) must set out—

(a) whether the Scottish Ministers have identified any challenges or risk faced by the Health Board or the Agency in carrying out its duties under—

(i) 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 etc. in health care staffing and planning),

(ii) section 12IJ, and

(iii) section 12IL, and

(b) the steps that the Scottish Ministers will take as a result.

(6) The Scottish Ministers must lay before the Parliament—

(a) a summary and evaluation of the information submitted to them under subsection (1), and

(b) a report under subsection (4).

**12IN Ministerial guidance on staffing**

(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 12IM.

(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 etc. 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 (d) of section 12IJ(2), and

(ii) decision-making, under paragraph (e) of that subsection, about staffing establishments and about the way in which health care is provided, and

(c) procedures for the identification, mitigation and escalation of risks caused by staffing levels in arrangements put in place under sections 12IC to 12IE.

(3) Before issuing such guidance, the Scottish Ministers must consult—

(a) every Health Board,

(b) every relevant 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 the persons mentioned in paragraphs (a) to (e),

(g) such professional regulatory bodies for employees of the persons mentioned in paragraphs (a) to (e) as they consider appropriate, and

(h) such other persons as they consider appropriate.

(4) The Scottish Ministers must publish any guidance issued under this section.

**12IO Interpretation of sections 12H to 12IN**

In sections 12H to 12IN—

"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 an individual holding a senior executive role in the provision of nursing services),

"employee" means an individual in paid employment by, as the case may be, a Health Board, the Agency or (where an integration scheme under Part 1 of the Public Bodies (Joint Working) (Scotland) Act 2014 applies) a local authority, 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,

"relevant Special Health Board" means a Special Health Board which is required, by virtue of an order made under section 2, to comply with any of the duties imposed by sections 12IA to 12IN.".

(3) Section 12H(3) is repealed.

(4) In section 105(3) (orders, regulations and directions), after "section 10Z7" insert " , section 12IJ(5), section 12IK(4) ".

**Textual Amendments**

**F1** Word in s. 4(2) inserted (12.5.2023) by The Health and Care (Staffing) (Scotland) Act 2019 Amendment Regulations 2023 (S.S.I. 2023/127), regs. 1, **3(2)(a)**

**F2** Word in s. 4(2) substituted (12.5.2023) by The Health and Care (Staffing) (Scotland) Act 2019 Amendment Regulations 2023 (S.S.I. 2023/127), regs. 1, **3(2)(b)**

**F3** Words in s. 4(2) substituted (12.5.2023) by The Health and Care (Staffing) (Scotland) Act 2019 Amendment Regulations 2023 (S.S.I. 2023/127), regs. 1, **3(2)(c)**

**Commencement Information**

**I1** S. 4(1)(2) in force at 15.5.2023 for specified purposes by S.S.I. 2023/131, reg. 2, **sch.**

**I2** S. 4(1)(2) in force at 6.2.2024 for specified purposes by S.S.I. 2024/20, **reg. 2(1)**

**I3** S. 4(1)(2) in force at 1.4.2024 in so far as not already in force by S.S.I. 2024/20, **reg. 2(2)**

**I4** S. 4(3)(4) in force at 1.4.2024 by S.S.I. 2024/20, **reg. 2(2)**

## 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 12IC ",

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

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

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

(vi) after the entry inserted by sub-paragraph (v), insert " Section 12IH ",

(vii) after the entry inserted by sub-paragraph (vi), insert " Section 12II ",

(viii) after the entry inserted by sub-paragraph (vii), insert " Section 12IJ ",

(ix) after the entry inserted by sub-paragraph (viii) , insert " Section 12IL ",

(x) after the entry inserted by sub-paragraph (ix), insert " Section 12IM ", and

(xi) after the entry inserted by sub-paragraph (x), insert " Section 12IN ", 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 have real-time staffing assessment in place ",

(iii) in the place corresponding to the entry inserted by paragraph (a)(iii), insert " Duty to have risk escalation process in place ",

(iv) in the place corresponding to the entry inserted by paragraph (a)(iv), insert " Duty to have arrangements to address severe and recurrent risks ",

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

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

(vii) in the place corresponding to the entry inserted by paragraph (a)(vii), insert " Duty to ensure appropriate staffing: training of staff ",

(viii) in the place corresponding to the entry inserted by paragraph (a)(viii), insert " Duty to follow common staffing method ",

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

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

(xi) in the place corresponding to the entry inserted by paragraph (a)(xi), 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 ", and

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

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(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 12IC ",

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

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

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

(vi) after the entry inserted by sub-paragraph (v), insert " Section 12IH ",

(vii) after the entry inserted by sub-paragraph (vi), insert " Section 12II ",

(viii) after the entry inserted by sub-paragraph (vii), insert " Section 12IM ", and

(ix) after the entry inserted by sub-paragraph (viii), insert " Section 12IN ",

(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 have real-time staffing assessment in place ",

(iii) in the place corresponding to the entry inserted by paragraph (a)(iii), insert " Duty to have risk escalation process in place ",

(iv) in the place corresponding to the entry inserted by paragraph (a)(iv), insert " Duty to have arrangements to address severe and recurrent risks ",

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

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

(vii) in the place corresponding to the entry inserted by paragraph (a)(vii), insert " Duty to ensure appropriate staffing: training of staff ",

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

(ix) in the place corresponding to the entry inserted by paragraph (a)(ix), 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)(viii), insert " Applied in so far as it relates to sections **[**[F4]12IA, 12IC, 12ID, 12IE, 12IF, 12IH and 12II**]** of the Act and section 2 of the Health and Care (Staffing) (Scotland) Act 2019 ", and

(ii) in the place corresponding to the entry inserted by paragraph (a)(ix), insert " Applied in so far as it relates to sections **[**[F4]12IA, 12IC, 12ID, 12IE, 12IF, 12IH and 12II**]** of the Act and section 2 of the Health and Care (Staffing) (Scotland) Act 2019 ".

(6) 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 ", and

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

(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—

(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 12IC ",

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

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

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

(vi) after the entry inserted by sub-paragraph (v), insert " Section 12IH ",

(vii) after the entry inserted by sub-paragraph (vi), insert " Section 12II ",

(viii) after the entry inserted by sub-paragraph (vii), insert " Section 12IJ ",

(ix) after the entry inserted by sub-paragraph (viii), insert " Section 12IL ",

(x) after the entry inserted by sub-paragraph (ix), insert " Section 12IM ", and

(xi) after the entry inserted by sub-paragraph (x), insert " Section 12IN ", 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 have real-time staffing assessment in place ",

(iii) in the place corresponding to the entry inserted by paragraph (a)(iii), insert " Duty to have risk escalation process in place ",

(iv) in the place corresponding to the entry inserted by paragraph (a)(iv), insert " Duty to have arrangements to address severe and recurrent risks ",

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

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

(vii) in the place corresponding to the entry inserted by paragraph (a)(vii), insert " Duty to ensure appropriate staffing: training of staff ",

(viii) in the place corresponding to the entry inserted by paragraph (a)(viii), insert " Duty to follow common staffing method ",

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

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

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

**Changes to legislation:** *There are currently no known outstanding effects for the Health and Care (Staffing) (Scotland) Act 2019, PART 2. (See end of Document for details)*

(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 ", and

(b) in column 2, in the place corresponding to the entry inserted by paragraph (a), insert " Duties to have regard to guiding principles etc. 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 12IC ",

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

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

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

(vi) after the entry inserted by sub-paragraph (v), insert " Section 12IH ",

(vii) after the entry inserted by sub-paragraph (vi), insert " Section 12II ",

(viii) after the entry inserted by sub-paragraph (vii), insert " Section 12IJ ",

(ix) after the entry inserted by sub-paragraph (viii), insert " Section 12IL ",

(x) after the entry inserted by sub-paragraph (ix), insert " Section 12IM ", and

(xi) after the entry inserted by sub-paragraph (x), insert " Section 12IN ", 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 have real-time staffing assessment in place ",

(iii) in the place corresponding to the entry inserted by paragraph (a)(iii), insert " Duty to have risk escalation process in place ",

(iv) in the place corresponding to the entry inserted by paragraph (a)(iv), insert " Duty to have arrangements to address severe and recurrent risks ",

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

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

(vii) in the place corresponding to the entry inserted by paragraph (a)(vii), insert " Duty to ensure appropriate staffing: training of staff ",

(viii) in the place corresponding to the entry inserted by paragraph (a)(viii), insert " Duty to follow common staffing method ",

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

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

(xi) in the place corresponding to the entry inserted by paragraph (a)(xi), 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 ", and

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

**Textual Amendments**

**F4** Words in s. 5(5)(c) substituted (12.5.2023) by The Health and Care (Staffing) (Scotland) Act 2019 Amendment Regulations 2023 (S.S.I. 2023/127), regs. 1, **3(3)**

**Commencement Information**

**I5** S. 5(1)(2)(a)(xi)(b) in force at 15.5.2023 for specified purposes by S.S.I. 2023/131, reg. 2, **sch.**
**I6** S. 5(1)(2)(a)(xi)(b) in force at 1.4.2024 in so far as not already in force by S.S.I. 2024/20, **reg. 2(2)**
**I7** S. 5(2)(a)(i)-(x) in force at 1.4.2024 by S.S.I. 2024/20, **reg. 2(2)**
**I8** S. 5(3) in force at 1.4.2024 by S.S.I. 2024/20, **reg. 2(2)**
**I9** S. 5(4)(5)(a)(ix)(b) in force at 15.5.2023 for specified purposes by S.S.I. 2023/131, reg. 2, **sch.**
**I10** S. 5(4)(5)(a)(ix)(b) in force at 1.4.2024 in so far as not already in force by S.S.I. 2024/20, **reg. 2(2)**
**I11** S. 5(6) in force at 1.4.2024 by S.S.I. 2024/20, **reg. 2(2)**
**I12** S. 5(7)(8)(a)(xi)(b) in force at 15.5.2023 for specified purposes by S.S.I. 2023/131, reg. 2, **sch.**
**I13** S. 5(7)(8)(a)(xi)(b) in force at 1.4.2024 in so far as not already in force by S.S.I. 2024/20, **reg. 2(2)**
**I14** S. 5(8)(a)(i)-(x) in force at 1.4.2024 by S.S.I. 2024/20, **reg. 2(2)**
**I15** S. 5(9) in force at 1.4.2024 by S.S.I. 2024/20, **reg. 2(2)**
**I16** S. 5(10)(11)(a)(xi)(b) in force at 15.5.2023 for specified purposes by S.S.I. 2023/131, reg. 2, **sch.**
**I17** S. 5(10)(11)(a)(xi)(b) in force at 1.4.2024 in so far as not already in force by S.S.I. 2024/20, **reg. 2(2)**
**I18** S. 5(11)(a)(i)-(x) in force at 1.4.2024 by S.S.I. 2024/20, **reg. 2(2)**
**I19** S. 5(12) in force at 1.4.2024 by S.S.I. 2024/20, **reg. 2(2)**

## 6 Role of Healthcare Improvement Scotland in relation to staffing

(1) The National Health Service (Scotland) Act 1978 is amended as follows.

(2) After section 12IO (as inserted by section 4) insert—

*"HIS functions in relation to staffing*

### 12IP HIS: monitoring compliance with staffing duties

HIS must monitor the discharge, by every Health Board, relevant Special Health Board and the Agency, of their duties under—

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

(b) section 12IC,

(c) section 12ID,

(d) section 12IE,

**Changes to legislation:** *There are currently no known outstanding effects for the Health and Care (Staffing) (Scotland) Act 2019, PART 2. (See end of Document for details)*

(e) section 12IF,
(f) section 12IH,
(g) section 12II,
(h) section 12IJ,
(i) section 12IL,
(j) section 12IM, and
(k) section 12IN.

**12IQ HIS: monitoring and review of common staffing method**

(1) In respect of each type of health care mentioned in section 12IK, HIS must monitor—
  (a) the effectiveness of the common staffing method described in section 12IJ(2), and
  (b) the way in which Health Boards, relevant Special Health Boards and the Agency are using the common staffing method.

(2) In exercising the duty imposed by subsection (1), HIS must from time to time as it considers appropriate carry out reviews of the matters listed in subsection (1)(a) and (b).

(3) In carrying out such a review, HIS must—
  (a) consult—
    (i) the Scottish Ministers,
    (ii) Social Care and Social Work Improvement Scotland,
    (iii) every Health Board,
    (iv) every relevant Special Health Board,
    (v) every integration authority,
    (vi) the Agency,
    (vii) such trade unions and professional bodies as HIS considers to be representative of employees of the persons mentioned in sub-paragraphs (iii) to (vi),
    (viii) such professional regulatory bodies for employees of the persons mentioned in sub-paragraphs (iii) to (vi) as HIS considers appropriate,
    (ix) such other providers of health care as HIS considers to have relevant experience of using staffing level tools and professional judgement tools, and
    (x) such other persons as HIS considers appropriate, and
  (b) have regard to the guiding principles for health and care staffing set out in section 1 of the Health and Care (Staffing) (Scotland) Act 2019.

(4) The Scottish Ministers may direct HIS to carry out a review under subsection (2).

(5) Following a review under subsection (2), HIS may recommend changes to the common staffing method to the Scottish Ministers.

(6) Where HIS makes such recommendations it must submit to the Scottish Ministers, and then publish, a report setting out—
  (a) a summary of the review it has carried out under subsection (2),

(b) its recommendations for changes to the common staffing method, and

(c) the reasons for those recommendations.

(7) In recommending changes to the common staffing method, HIS may take into account the development of a new or revised staffing level tool or professional judgement tool under section 12IR(2).

**12IR HIS: monitoring and development of staffing tools**

(1) HIS must—

(a) monitor the effectiveness of any staffing level tool or professional judgement tool which has been prescribed by the Scottish Ministers under section 12IJ(3) (including any new or revised tools which have been developed under this section), and

(b) where it considers that any such tool is no longer effective, recommend the revocation or replacement of the tool to the Scottish Ministers.

(2) HIS may develop and recommend to the Scottish Ministers new or revised staffing level tools and professional judgement tools for use in relation to any kind of health care provision.

(3) In developing such tools, HIS must collaborate with—

(a) the Scottish Ministers,

(b) Social Care and Social Work Improvement Scotland,

(c) every Health Board,

(d) every relevant Special Health Board,

(e) every integration authority,

(f) the Agency,

(g) such trade unions and professional bodies as HIS considers to be representative of employees of the persons mentioned in paragraphs (c) to (f),

(h) such professional regulatory bodies for employees of the persons mentioned in paragraphs (c) to (f) as HIS considers appropriate,

(i) such other providers of health care as HIS considers to have relevant experience of using staffing level tools and professional judgement tools, and

(j) such other persons as HIS considers appropriate.

(4) In undertaking such 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) must have regard to the guiding principles for health and care staffing set out in section 1 of the Health and Care (Staffing) (Scotland) Act 2019.

(5) The Scottish Ministers may direct HIS to develop a new or revised staffing level tool or professional judgement tool for use in relation to a particular kind of health care provision specified in the direction.

(6) The Scottish Ministers may by regulations require that assumptions on certain matters (for example, as to staff absence and bed occupancy levels) must be made by HIS in the process of making a recommendation to them under subsection (2).

**12IS HIS: duty to consider multi-disciplinary staffing tools**

(1) When HIS is developing a new or revised staffing level tool or professional judgement tool under section 12IR, it must consider whether the tool should apply to more than one professional discipline.

(2) HIS may at any time recommend to the Scottish Ministers that a staffing level tool or professional judgement tool which has been prescribed by the Scottish Ministers under section 12IJ(3) should apply to more than one professional discipline.

**12IT HIS: duty on Health Boards to assist staffing functions**

Every Health Board, relevant Special Health Board and the Agency must give such assistance to HIS as it requires in the performance of its functions under sections 12IP to 12IS.

**12IU HIS: power to require information**

(1) HIS may, in pursuance of its functions under sections 12IP to 12IS, serve a notice on a Health Board, relevant Special Health Board or the Agency requiring the Board or the Agency (as the case may be)—
   (a) to provide HIS with information about any matter specified in the notice, and
   (b) to provide that information by a date specified in the notice.

(2) A notice under subsection (1) must explain why, and in pursuance of which function, the information is required.

(3) A Health Board, relevant Special Health Board or the Agency (as the case may be) must comply with any such notice served on it.

**12IV HIS: ministerial guidance on staffing functions**

(1) The following persons must have regard to any guidance issued by the Scottish Ministers about the operation of sections 12IP to 12IU—
   (a) HIS,
   (b) every Health Board,
   (c) every relevant Special Health Board, and
   (d) the Agency.

(2) Before issuing such guidance, the Scottish Ministers must consult the persons listed in paragraphs (b) to (j) of section 12IR(3) (reading the references to HIS as if they were references to the Scottish Ministers).

(3) The Scottish Ministers must publish any guidance issued under this section.

**12IW Interpretation of sections 12IP to 12IV**

In sections 12IP to 12IV—

"employee" has the meaning given by section 12IO,

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

"relevant Special Health Board" has the meaning given by section 12IO,

"staffing level tool" and "professional judgement tool" are to be construed in accordance with section 12IJ(3).".

(3) In section 10C (health service functions)—

(a) after subsection (3), insert—

"(3A) HIS is to exercise the functions in relation to staffing conferred by virtue of sections 12IP to 12IS and section 12IU.",

(b) at the end of subsection (5), insert " , and by virtue of sections 12IP to 12IS and section 12IU. ",

(c) in subsection (6), for "and section 10D" insert " , section 10D, sections 12IP to 12IS and section 12IU, ",

(d) in subsection (7), for "and section 10D" insert " , section 10D, sections 12IP to 12IS and section 12IU, ".

(4) In section 10I(1) (inspections of services provided under the health service)—

(a) the word "or" at the end of paragraph (a) is repealed,

(b) at the end of paragraph (b), insert ", or

(c) in pursuance of its functions under sections 12IP to 12IS and section 12IU.".

**Commencement Information**

**I20** S. 6(1)(2) in force at 15.5.2023 for specified purposes by S.S.I. 2023/131, reg. 2, **sch.**

**I21** S. 6(1)(2) in force at 1.4.2024 in so far as not already in force by S.S.I. 2024/20, **reg. 2(2)**

**I22** S. 6(3)(4) in force at 1.4.2024 by S.S.I. 2024/20, **reg. 2(2)**

**Changes to legislation:**
There are currently no known outstanding effects for the Health and Care (Staffing) (Scotland) Act 2019, PART 2.