

Health and Care (Staffing) (Scotland) Act 2019

2019 asp 6

PROSPECTIVE

PART 3

STAFFING IN CARE SERVICES

7 Duty on care service providers to ensure appropriate staffing

- (1) Any person who provides a care service must ensure that at all times suitably qualified and competent individuals are working in the care service in such numbers as are appropriate for—
 - (a) the health, wellbeing and safety of service users,
 - (b) the provision of safe and high-quality care, and
 - (c) in so far as it affects either of those matters, the wellbeing of staff.
- (2) In determining what constitutes appropriate numbers for the purposes of subsection (1), regard is to be had to—
 - (a) the nature of the care service,
 - (b) the size of the care service,
 - (c) the aims and objectives of the care service,
 - (d) the number of service users, and
 - (e) the needs of service users.

8 Training of staff

- (1) Any person who provides a care service must ensure that individuals working in the care service receive—
 - (a) appropriate training for the work they are to perform, and
 - (b) suitable assistance, including time off work, for the purpose of obtaining further qualifications appropriate to their work.

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- (2) In subsection (1)(a), “appropriate training” includes training in how to use any method for staffing required in regulations by the Scottish Ministers under section 82B(1) of the Public Services Reform (Scotland) Act 2010.

9 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—
- (a) a summary of how the duties imposed by sections 3, 7 and 8 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,
 - (c) the steps that Ministers have taken to support staffing levels in care services in order to assist the discharge of those duties,
 - (d) 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 7, and
 - (e) 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.
- (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
 - (c) such other kinds of care professionals as the Scottish Ministers consider relevant to the discharge of the duties imposed by sections 3, 7 and 8.
- (3) In preparing a report under subsection (1), the Scottish Ministers must have regard to—
- (a) any review carried out by SCSWIS under section 82D(1) of the Public Services (Reform) (Scotland) Act 2010,
 - (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,
 - (d) 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 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

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

10 Ministerial guidance on staffing

- (1) Any person who provides a care service must have regard to any guidance issued by the Scottish Ministers about the carrying out of its duties under sections 7 and 8.
- (2) Such guidance may, in particular, include provision about the related duty under section 3(1) to have regard to the guiding principles for health and care staffing.
- (3) Before issuing such guidance, the Scottish Ministers must consult—
 - (a) SCSWIS,
 - (b) the Scottish Social Services Council,
 - (c) such persons as they consider to be representative of the providers, commissioners and users of care services,
 - (d) such trade unions and professional bodies as they consider to be representative of individuals working in care services,
 - (e) such persons as they consider to be representative of carers (within the meaning of section 1 of the Carers (Scotland) Act 2016), and
 - (f) such other persons as they consider appropriate.
- (4) The Scottish Ministers must publish any guidance issued under this section.

11 Interpretation of sections 7 to 10

In sections 7 to 10—

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

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

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

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

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

12 Functions of SCSWIS in relation to staffing methods

- (1) The Public Services Reform (Scotland) Act 2010 is amended as follows.
- (2) After section 82 insert—

“CHAPTER 3A

CARE SERVICES: STAFFING

82A Development of staffing methods

- (1) SCSWIS may develop and recommend to the Scottish Ministers staffing methods for use by persons who provide—

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- (a) care home services for adults, and
 - (b) such other care services as the Scottish Ministers may by regulations specify.
- (2) In developing such methods, SCSWIS must collaborate with—
- (a) the Scottish Ministers,
 - (b) Healthcare Improvement Scotland,
 - (c) the Scottish Social Services Council,
 - (d) every Health Board,
 - (e) every local authority,
 - (f) every integration authority,
 - (g) such persons as SCSWIS considers to be representative of the providers and users of the care services to whom the staffing methods are to apply,
 - (h) such trade unions and professional bodies as SCSWIS considers to be representative of individuals working in those care services, and
 - (i) such other persons as SCSWIS considers appropriate.
- (3) In undertaking such collaboration, SCSWIS and those other persons must have regard to—
- (a) any guidance issued by the Scottish Ministers about the operation of this section, and
 - (b) 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 must publish any guidance issued under subsection (3)
- (a).
- (5) A staffing method developed and recommended under subsection (1) must include the use of staffing level tools designed to provide—
- (a) quantitative information relating to workload, based on the needs of service users, and
 - (b) quantitative or qualitative information relating to professional judgement,
- in order to assist in determining the appropriate staffing levels for a care service.
- (6) 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.
- (7) A staffing method developed and recommended under subsection (1) may include, in particular, the taking into account of—
- (a) the current staffing levels of a care service and any vacancies,
 - (b) the local context in which a care service is provided,
 - (c) the physical environment in which a care service is provided,
 - (d) any assessment of the quality of a care service,
 - (e) the needs of the users of a care service,
 - (f) comments by the users of a care service, and by individuals who have a personal interest in their care (for example family members and carers within the meaning of section 1 of the Carers (Scotland) Act

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- 2016), which relate to the duty imposed by section 7 of the Health and Care (Staffing) (Scotland) Act 2019,
- (g) comments by the individuals working in a care service which relate to the duty imposed by section 7 of the Health and Care (Staffing) (Scotland) Act 2019,
 - (h) recommendations of senior care sector or health care professionals with qualifications and experience that are appropriate to the care services in question,
 - (i) the standards and outcomes applicable to care services published by the Scottish Ministers under section 50,
 - (j) such indicators or measures relating to the quality of care as SCSWIS considers appropriate,
 - (k) such guidance, published by professional bodies of the kind described in subsection (2)(h) or by other bodies with experience in relevant fields, as SCSWIS considers appropriate, and
 - (l) such clinical evidence and research as SCSWIS considers appropriate.

82B Regulations: requirement to use staffing methods

- (1) Following the development and recommendation by SCSWIS under section 82A or 82C of a staffing method for use by persons who provide care services, the Scottish Ministers may by regulations require the use of that method (with or without modifications) by persons who provide those care services.
- (2) Regulations under subsection (1) may prescribe—
 - (a) the types of care settings and individuals working in a care service in relation to which, and whom, a staffing method is to be used,
 - (b) the minimum frequency at which a staffing method is to be used, and
 - (c) the staffing level tools for the purpose of section 82A(5).

82C Review and redevelopment of staffing methods

- (1) SCSWIS may—
 - (a) carry out reviews, from time to time as it considers appropriate, of the effectiveness of any staffing method which has been prescribed by the Scottish Ministers under section 82B (including any revised methods which have been developed under this section), and
 - (b) where it considers that any such method is no longer effective, recommend the revocation or replacement of the method to the Scottish Ministers.
- (2) SCSWIS may develop and recommend to the Scottish Ministers revised staffing methods for use by persons who provide care services.
- (3) Subsections (2), (3), (5) and (7) of section 82A apply to the redevelopment of staffing methods under this section as they apply to their development under that section.

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- (4) The Scottish Ministers may direct SCSWIS to develop a revised staffing method for use in relation to a particular kind of care service specified in the direction.

82D Review of duty on care service providers to ensure appropriate staffing

- (1) SCSWIS may carry out reviews, from time to time as it considers appropriate, of the effectiveness of the operation of the duty under section 7 of the Health and Care (Staffing) (Scotland) Act 2019.
- (2) Having carried out a review under subsection (1), SCSWIS may publish a report to the Scottish Ministers on the operation of that duty.
- (3) A report under subsection (2) may be published in such manner as SCSWIS considers appropriate.

82E Duty to consider multi-disciplinary staffing tools

- (1) When SCSWIS is developing a staffing level tool as part of a staffing method under section 82A or a revised staffing method under section 82C, it must consider whether the tool should apply to more than one professional discipline.
- (2) SCSWIS may at any time recommend to the Scottish Ministers that a staffing level tool which has been prescribed as part of a staffing method by the Scottish Ministers under section 82B should apply to more than one professional discipline.

82F Interpretation of Chapter

In this Chapter—

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

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

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

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

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

13 Care services: consequential amendments

- (1) In the Public Services Reform (Scotland) Act 2010—
- (a) in section 60 (grant or refusal of registration), in subsection (3)(a), after “section 78” insert “ or 82B(1) ”,
 - (b) in section 104 (orders and regulations: procedure), in subsection (2), for “or 78” substitute “ , 78, 82B(1) ”.

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(2) Regulation 15 of the Social Care and Social Work Improvement Scotland (Requirements for Care Services) Regulations 2011 (S.S.I. 2011/210) is revoked.

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