

HEALTH AND CARE (STAFFING) SCOTLAND) ACT 2019

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1 – Guiding Principles for Staffing

Section 1 – Guiding principles for health and care staffing

9. Section 1 sets out guiding principles for the provision of health and care staffing, specifically that the primary purposes of staffing for health and care services are to provide safe and high-quality services; and to ensure the best health care outcomes for service users, while also meeting, in so far as consistent with those primary purposes, the principles set out in subsection (1)(b).
10. The multi-disciplinary nature of health services and care services is acknowledged in subsection (1)(b)(viii), which sets out that staffing for health and care services are to promote multi-disciplinary services as appropriate, with subsection (2) defining ‘multi-disciplinary services’ as 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.
11. Subsection (2) also defines certain terms used in Part 1 of the Act. A care service is a service mentioned in section 47(1) of the 2010 Act – that Act constitutes the main legislation governing such services, whose providers are required to register with SCSWIS. Therefore all registered providers of care services will have to have regard to the staffing principles in delivering their service, even where no specified staffing tools and methodologies are in place for their particular kind of care service.

Section 2 – Guiding principles etc. in health care staffing and planning

12. This section places a duty on all geographical Health Boards and the Agency, in carrying out the duty to ensure appropriate staffing introduced by section 12IA of the 1978 Act (as inserted by section 4 of the Act), to have regard to the guiding principles in section 1. It also places a duty on all geographical Health Boards and the Agency to have regard to these guiding principles when commissioning health care from third parties, and to have regard to the need for such third parties to have appropriate staffing in place. The effect is to make these matters relevant considerations for Health Boards and the Agency in their decision-making in planning services, and in selecting and contracting with service providers.
13. Subsections (3) and (4) place a duty on Health Boards and the Agency to report to Scottish Ministers on how they have complied with subsections (1) and (2). This also requires them to report on how the services contracted have improved outcomes for patients. Subsections (5) and (6) require the Scottish Ministers to collate these reports and lay this collated report before the Parliament, setting out the steps taken by Health

Boards and the Agency to comply with subsections (1) and (2), and the steps that Ministers will take in response to the recommendations and conclusions of the report.

Section 3 – Guiding principles etc. in care service staffing and planning

14. **Section 3** makes equivalent provision to section 2 for care services, setting out that any person providing a care service must also have regard to the principles set out in section 1 when carrying out the duty to ensure appropriate staffing imposed by section 7 of the Act.
15. Section 3 also places a duty on local authorities and integration authorities (as defined in the Public Bodies (Joint Working) (Scotland) Act 2014 (“the 2014 Act”) to have regard to the guiding principles, and the duties imposed by this Act, and Chapters 3 and 3A of the 2014 Act, on care service providers, when commissioning care services. As with section 2 for the NHS, this means that the new legal framework becomes a relevant part of the planning of such services, as well as their delivery.
16. Subsection (3) allows the Scottish Ministers to issue guidance to local authorities and integration authorities which they must have regard to in carrying out their duties outlined above. Before issuing the guidance, the Scottish Ministers must consult the persons mentioned in subsection (4). Subsection (5) requires that the guidance is published.
17. Subsection (6) creates a duty on local authorities and integration authorities to report to Scottish Ministers on how they have complied with subsection (2) and any risks that may affect their ongoing ability to do so.