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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations bring certain provisions of the Health and Care (Staffing) (Scotland) Act 2019 (“2019 Act”) into force on 15 May 2023 for the limited purpose of enabling the Scottish Ministers to consult on guidance.

Section 4(1) and (2) of the 2019 Act inserts sections 12IA to 12IO into the National Health Service (Scotland) Act 1978 (“the 1978 Act”). Section 6 of the 2019 Act inserts sections 12IP to 12IW into the 1978 Act.

Under section 3(3) of the 2019 Act, local authorities and integration authorities must have regard to any guidance issued by the Scottish Ministers about the requirement under section 3(2) to have regard to certain matters when planning or securing the provision of a care service from another person. Under section 3(4), the Scottish Ministers must consult those listed before issuing such guidance. Section 3(3) and (4) and aspects of section 1(2) of the 2019 Act are commenced only insofar as necessary to enable the Scottish Ministers consult on guidance under section 3(4) of that Act.

Under section 12IN(1) of the 1978 Act, Health Boards and the Common Services Agency for the Scottish Health Service must have regard to any guidance issued by the Scottish Ministers about the carrying out of their respective duties under sections 12IA to 12IM. Section 12IN(2) makes further provision in relation to the content of such guidance. Under section 12IN(3), the Scottish Ministers must consult certain persons before issuing such guidance (see below as regards provision made at section 12IN(3)(b) for Special Health Boards). Section 12IO contains definitions relevant to section 12IN(3) and section 12IJ(3) contains definitions relevant to section 12IV(2). Section 4(1) and (2) of the 2019 Act is commenced only insofar as necessary to enable the Scottish Ministers to consult on guidance under sections 12IN(3) and 12IV(2) of the 1978 Act.

Under sections 12IN(3)(b) and 12IV(2) of the 1978 Act, the Scottish Ministers must consult “every relevant Special Health Board” (as defined in section 12IO) before issuing such guidance. Section 5(1), (2), (4), (5), (7), (8), (10) and (11) of the 2019 Act is commenced only insofar as necessary to enable the Scottish Ministers to consult the State Hospital Board for Scotland, the Scottish Ambulance Service Board, NHS 24 and the National Waiting Times Centre Board on guidance under sections 12IN(3)(b) and 12IV(2) of the 1978 Act.

Under section 12IV(1) of the 1978 Act, the persons listed must have regard to any guidance issued by the Scottish Ministers about the operation of sections 12IP to 12IU. Under section 12IV(2), 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) before issuing such guidance. Those persons listed at paragraphs (b) to (j) of section 12IR(3) include Health Boards, the Common Services Agency for the Scottish Health Service and Special Health Boards. Section 12IW contains definitions relevant to section 12IR(3). Section 6(1) and (2) of the 2019 Act are commenced only insofar as necessary to enable the Scottish Ministers to consult on guidance under section 12IV(2) of the 1978 Act.

Under Section 10(1) of the 2019 Act 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 of the 2019 Act. Section 10(2) makes further provision in relation to the content of such guidance. Under section 10(3), the Scottish Ministers must consult those listed before issuing such guidance. Section 11 contains definitions relevant to section 10(1) and (3). Section 10(1) to (3) and section 11 are commenced only insofar as necessary to enable the Scottish Ministers to consult on guidance under section 10(3) of the 2019 Act.

**Status:** *This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

The Bill for the Act received Royal Assent on 6 June 2019. Sections 14, 15 and 16 of the Act came into force on the day following Royal Assent.