

**2023 No. 131 (C. 12)**

**HEALTH SERVICES**

**SOCIAL CARE**

**The Health and Care (Staffing) (Scotland) Act 2019  
(Commencement No. 1) Regulations 2023**

<i>Made</i> - - - -	<i>25th April 2023</i>
<i>Laid before the Scottish Parliament</i>	<i>27th April 2023</i>
<i>Coming into force</i> - -	<i>15th May 2023</i>

The Scottish Ministers make the following Regulations in exercise of the powers conferred on them by section 15(2) and (3)(b) of the Health and Care (Staffing) (Scotland) Act 2019(a).

**Citation, commencement and interpretation**

**1.**—(1) These Regulations may be cited as the Health and Care (Staffing) (Scotland) Act 2019 (Commencement No. 1) Regulations 2023, and come into force on 15 May 2023.

(2) In these Regulations—

“the 1978 Act” means the National Health Service (Scotland) Act 1978(b),

“the 2019 Act” means the Health and Care (Staffing) (Scotland) Act 2019.

**Appointed day**

**2.** 15 May 2023 is the day appointed for the coming into force of the provisions of the 2019 Act specified in column 1 of the table in the schedule (the subject matter of which is described in the corresponding entry in column 2 of the table), for the purpose specified in the corresponding entry in column 3 of the table.

*MICHAEL MATHESON*  
A member of the Scottish Government

St Andrew’s House,  
Edinburgh  
25th April 2023

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(a) 2019 asp 6.  
(b) 1978 c. 29.

## SCHEDULE

Regulation 2

<i>Column 1</i> <i>Provision of the 2019 Act</i>	<i>Column 2</i> <i>Subject matter</i>	<i>Column 3</i> <i>Purpose</i>
Section 1(2)	Part 1 definitions	Insofar as it provides for the definition of “care service” and only insofar as necessary to enable the Scottish Ministers to consult on guidance under section 3(4) of the 2019 Act.
Section 3(3) and (4)	Guiding principles etc. in care service staffing and planning	Only insofar as necessary to enable the Scottish Ministers to consult on guidance under section 3(4) of the 2019 Act.
Section 4(1) and (2)(a)	NHS duties in relation to staffing	Insofar as it inserts sections 12IJ(3) and 12IN(1) to (3) and the definitions of “employee”, “health care” and “relevant Special Health Board” in section 12IO into the 1978 Act and only insofar as necessary to enable the Scottish Ministers to consult on guidance under section 12IN(3) of that Act.
Section 5(1) and (2)	Application of duties to the State Hospitals Board for Scotland	Insofar as it inserts paragraph (xi) in columns 1 and 2 of Part 1 of the schedule of the State Hospitals Board for Scotland Order 1995(b) and only insofar as necessary to enable the Scottish Ministers to consult the State Hospitals Board for Scotland on guidance under sections 12IN(3)(b) and 12IV(2) of the 1978 Act.

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(a) Section 4(2) was amended by S.S.I. 2023/127.

(b) S.I. 1995/574, to which there are amendments not relevant to these Regulations.

Section 5(4) and (5)(a)	Application of duties to the Scottish Ambulance Service Board	Insofar as it inserts paragraph (ix) in columns 1 and 2 of Part 1 of the schedule of the Scottish Ambulance Service Board Order 1999 <b>(b)</b> and only insofar as necessary to enable the Scottish Ministers to consult the Scottish Ambulance Service Board on guidance under sections 12IN(3)(b) and 12IV(2) of the 1978 Act.
Section 5(7) and (8)	Application of duties to NHS 24	Insofar as it inserts paragraph (xi) in columns 1 and 2 of Part 1 of the schedule of the NHS 24 (Scotland) Order 2001 <b>(c)</b> and only insofar as necessary to enable the Scottish Ministers to consult NHS 24 on guidance under sections 12IN(3)(b) and 12IV(2) of the 1978 Act.
Section 5(10) and (11)	Application of duties to the National Waiting Times Centre Board	Insofar as it inserts paragraph (xi) in columns 1 and 2 of Part 1 of the schedule of the National Waiting Times Centre Board (Scotland) Order 2002 <b>(d)</b> and only insofar as necessary to enable the Scottish Ministers to consult the National Waiting Times Centre Board on guidance under sections 12IN(3)(b) and 12IV(2) of the 1978 Act.
Section 6(1) and (2)	Role of Healthcare Improvement Scotland in relation to staffing	Insofar as it inserts sections 12IR(3)(b) to (j), 12IV(1) and (2) and 12IW into the 1978 Act and only insofar as necessary to enable the Scottish Ministers to consult on guidance under section 12IV(2) of that Act.

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(a) Section 5(5) was amended by S.S.I. 2023/127.  
(b) S.I. 1999/686, to which there are amendments not relevant to these Regulations.  
(c) S.S.I. 2001/137, to which there are amendments not relevant to these Regulations.  
(d) S.S.I. 2002/305, to which there are amendments not relevant to these Regulations.

Section 10(1) to (3)	Ministerial guidance on staffing	Only insofar as necessary to enable the Scottish Ministers to consult on guidance under section 10(3) of the 2019 Act.
Section 11	Interpretation of sections 7 to 10	Only insofar as necessary to enable the Scottish Ministers to consult on guidance under section 10(3) of the 2019 Act.

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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.

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.

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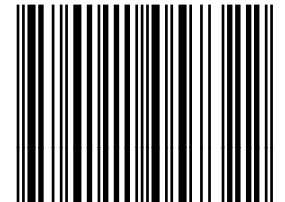
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