



Health and Care (Staffing) (Scotland) Act 2019

2019 asp 6

PART 2

STAFFING IN THE NHS

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

Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Health and Care (Staffing) (Scotland) Act 2019. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

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).

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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).

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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,

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“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

II S. 6(1)(2) in force at 15.5.2023 for specified purposes by [S.S.I. 2023/131](#), [reg. 2](#), [sch.](#)

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Changes and effects yet to be applied to :

- s. 6(1)(2) coming into force by [S.S.I. 2024/20 reg. 2\(2\)](#)
- s. 6(3)(4) coming into force by [S.S.I. 2024/20 reg. 2\(2\)](#)

Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 5(1)s. 5(2)(a)(xi)(b) coming into force by [S.S.I. 2024/20 reg. 2\(2\)](#)
- s. 5(4)s. 5(5)(a)(ix)(b) coming into force by [S.S.I. 2024/20 reg. 2\(2\)](#)
- s. 5(5)(a)(i)-(viii)(c) coming into force by [S.S.I. 2024/20 reg. 2\(2\)](#)
- s. 5(7)s. 5(8)(a)(xi)(b) coming into force by [S.S.I. 2024/20 reg. 2\(2\)](#)
- s. 5(10)s. 5(11)(a)(xi)(b) coming into force by [S.S.I. 2024/20 reg. 2\(2\)](#)