

Consultation on Safe Staffing Statutory Guidance – care services



POLICY BRIEFING

Introduction

The Health and Care (Staffing) (Scotland) Act passed in 2019. Commonly known as the Safe Staffing Act, it takes effect from 1 April 2024.

Statutory guidance setting out what organisations are required to do to comply with the Act is now being consulted on. The consultation opened on 22 June and closes on 19 September.

To have any positive impact on the staffing crisis, this statutory guidance must be the very best it can be. UNISON strongly encourages input from activists and members to inform the union's response to the consultation. This briefing for UNISON branches gives an overview of the draft guidance **as it relates to care services** and the consultation questions so that activists and members can engage with this process. These new statutory guidelines are separate from any plans around a national care service.

Context

The Act provides a statutory basis for the provision of 'appropriate' staffing in health and in social care settings. The Scottish Government states the guidance is deliberately not prescriptive but aims to support local decision-making and flexibility, improve transparency around decision-making, and promote an open culture where staff are able to raise concerns.

The Guidance will place duties on care service providers and all staff working for them, whether directly employed, agency or self employed. The Guidance applies to local authorities, integration authorities, care service providers, the Care Inspectorate, and Scottish Ministers.

Once the Act comes into force, relevant organisations will have to comply with its requirements and have regard to the statutory guidance issued by Ministers. The Care Inspectorate may also develop staffing methods for use in the care sector including staffing level tools.

Overview

Chapters 15-17 of the Guidance cover **social care** and the duties on care providers. This means all care providers. local authorities/integration authorities (the guidance also applies when local authorities or integration bodies are commissioning or procuring services from third parties – no reference is made to structural changes proposed as part of the national Care Service), and the Care Inspectorate. The Guidance covers all employed staff and paid volunteers.

The statutory guidance defines key terms such as the meaning of 'safe' and 'appropriate', who a 'clinical leader' is, and what constitutes 'training'.

It sets out 'guiding principles' for ensuring safe staffing and the factors that must be considered in determining staffing, such as local context, needs and unmet needs.

KEY POINTS:

- **The Scottish Government is consulting on Statutory Guidance to ensure safe staffing in health and care settings.**
- **The consultation closes on 19 September 2023.**
- **UNISON Scotland will be responding to the consultation.**
- **We are looking for views from branches, activists and members to inform UNISON's response.**



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The “guiding principles” laid out are

- improving standards and outcomes for people using services,
- taking account of the particular needs, abilities, characteristics and circumstances of different people using services;
- **respecting the dignity and rights of people using services;**
- **taking account of the views of staff and people using services;**
- ensuring the wellbeing of staff;
- **being open with staff and people using services about decisions on staffing;**
- **allocating staff efficiently and effectively; and**
- **promoting multi-disciplinary services as appropriate.**

Staffing methods and staffing tools.

The Act places a duty (the ‘section 7 duty’) on providers to ensure appropriate staffing “to enable the provision of safe and high-quality services which meet the needs of people who use them”. With “...the right person, with the right skills, available in the right place, at the right time to provide care”

In pursuit of the aims of the Act the Care Inspectorate may develop and then review, staffing methods for use in the care sector.

The Guidance states that “a staffing method sets out a framework or process to be followed by a care service provider to determine what appropriate staffing is in any particular care service and setting. It is specified that as well as taking into consideration factors such as where and how the service is being provided, any Staffing method “must include the use of staffing level tools”. These tools are expected to provide outputs such as numbers and types of staff required

Ministers can put in place legal requirements for the use of these staffing methods. Any staffing method developed by the care inspectorate is expected to be developed in collaboration with a wide range of stakeholders and professionals, including unions (see 17.5 in the Guidance). The Care Inspectorate will consider whether any tools developed should be multi disciplinary.

The guidance is clear that the accountability for the duties listed remains with the Care Inspectorate or care providers and not with individuals.

Local authorities and integration authorities will have to publish an annual report on how they have carried out the requirements regarding planning and securing care services from another body.

Consultation questions

There are only 5 consultation questions. However these are very broad and relate to every area covered by the guidance.

Question 1(a) Do you think the guidance is clear and easy to understand?

Question 1(b) Please detail any specific areas of the guidance that you found unclear or hard to understand.

Question 2(a) Do you think the guidance is comprehensive, in that it contains sufficient detail to be able to support organisations in meeting obligations placed on them by the Act?

Question 2(b) Please detail any specific areas where you felt information was missing or incomplete.

Question 3 Do you have any other comments on the draft guidance?

Action

UNISON is currently working on further information for branches and a consultation response tool for members. Please take the time to read the section that is applicable to you. Email your branch secretary for more info or on how you feel about this consultation: [click here to find your branch](#)

Additional reading

- [draft Statutory Guidance Health and Care \(Staffing\) \(Scotland\) Act 2019](#)
- [Health and Care \(Staffing\) \(Scotland\) Act 2019](#)
- [Scottish Government consultation page](#)



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