

The Health & Care (Staffing) Act and the NHS

Introduction

An act of parliament giving all NHS staff the right to raise concerns about short or inadequate staffing, and have those concerns investigated comes into force in April. The new measures may not have the teeth that we would like – but give staff an important platform to make short staffing an issue that employers can't ignore.

Context

The Health and Care Staffing (Scotland) Act – often called the 'Safe Staffing Act' was passed by the Scottish Parliament in 2019 and will come into force in 2024. The Act places a duty on Health Boards to ensure that "at all times suitably qualified and competent individuals...are working in such numbers as are appropriate" – both to provide healthcare and (secondary to that) "the wellbeing of staff".

How it works

A procedure has to be in place in health settings where staff can record situations where they are being asked to work with an unsafe level of staffing.

The roles whose numbers are to be monitored are in the Scottish Government's words "clinical staff and staff who provide clinical advice". This covers a very wide range – an indicative list is provided below.

The Act also means that Health Boards will be expected to be able to provide real time information about staffing levels in order to check that they are complying with the requirements to have safe levels of staffing.

Determining safe staffing levels

The Scottish Government is placed under a duty by the Act to devise a staffing tool which boards can then use to determine staffing levels locally.

The safe level of staffing is determined by Health Boards following a common staffing method specified by the Scottish Government. This staffing method involves use of a staffing level tool and a professional judgement tool. The staffing level tool is to provide information about workload based on patient needs. The professional judgement tool is to provide quantitative information relating to professional judgement to assist in determining appropriate staffing.

Other elements the common staffing method will need to take into account include; current staffing levels and vacancies, different skills and experience of employees, appropriate clinical advice and comments by patients. Scottish Government are very clear that there will be a great deal of local discretion in how these new rules are applied. The effectiveness and the operation of the common staffing method is kept under review by the Health Improvement Scotland.

KEY POINTS:

- **The Act places a duty on Health Boards to ensure adequate numbers of appropriately qualified staff are working in healthcare settings.**
- **The staffing levels monitored of a wide range of clinical staff are to be monitored.**
- **The Scottish Government has a duty to ensure that there adequate numbers of appropriately qualified staff available to Health Boards.**
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How does it work?

The procedure should allow for any member of staff report a staffing level issue to an individual with lead professional responsibility. Then from the lead professional to a more senior decision maker. Then for the more senior decision maker to seek and have regard to appropriate clinical advice on the risk and its mitigation

Arrangements should be in place so that “in appropriate cases by the reporting of the risk to members of the Health Board. ”

Boards must inform anyone raising concerns (or involved in dealing with them) of any outcomes or decisions made. There also needs also to be a procedure for anyone to record a disagreement with decision (unless it's a final decision by the Health Board). Boards are also required to have in place arrangements for raising awareness among staff of these procedures and the training of lead professionals (clinical and non clinical) in their use.

What happens then?

Health Boards have a duty to identify and address those risks which are considered to be either severe or liable to materialise frequently. The Board is then under a duty to take whatever steps it can to mitigate the risk and prevent its recurrence. *The duties under the Act to ensure safe levels of staffing and deal with reported levels of unsafe staffing lie with the Board not with individuals.* The Scottish Government in turn is expected to ensure that there are sufficient numbers of medical practitioners, registered nurses and midwives available for every Health Board and Special Health Board.

Clinical leads are expected to provide quarterly reports to boards on how well their area is meeting the staffing requirements. Boards in turn provide annual reports to Ministers. Ministers compile these reports into a document presented to Parliament which includes the steps taken by Boards to comply with the Act and the steps Scottish Government will take in response.

Other features

The requirements apply not just to directly provided NHS care but also care provided under contract or arrangements. Boards have a requirement to ensure staff are properly trained for their roles – and have appropriate time and resources to undertake training. Publication of numbers of agency staff and whenever they receive more than 150% of the equivalent NHS staff wage.

Action for Branches

Alert members about the forthcoming regulations and their right to report.

Start gathering information on staffing shortages.

Find out what preparations your Board are making to ensure staff know and can enforce their rights.

Make sure members job titles/ emails are up to date

Look out for UNISON's 'Safe Staffing' survey

Additional reading

- [UNISON Briefing on the Guidance attached to the Act](#)
- [Statutory guidance on the Bill](#)

Roles covered (partial list)

Allied health professions (All HCPC registrants, all bands, working in all areas)
Ambulance service roles (inc dispatchers, emergency call handlers and technicians)
Anaesthetics
Dental
Healthcare scientists
Assistant practitioners, associate practitioners, healthcare support workers, maternity care assistants and medical laboratory assistants (all bands)
Medical
Nursing and midwifery
NHS24 call handlers
Operating Department Practitioner
Optometry
Pharmacy
Physician associate
Public Health roles not covered elsewhere in the list
Psychology
Registered Chaplains
[Full list here](#)



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