POLICY NOTE

THE NATIONAL HEALTH SERVICE (COMMON STAFFING METHOD) (SCOTLAND) AMENDMENT REGULATIONS 2026

SSI 2026/54

The above instrument was made in exercise of the powers conferred by sections 12IJ(3) and 105(7) of the National Health Service (Scotland) Act 1978 (the 1978 Act). The instrument is subject to negative procedure.

Summary Box

This instrument amends the National Health Service (Common Staffing Method) (Scotland) Regulations 2024 (the 2024 Regulations) which specify the staffing level and professional judgement tools that must be used as part of the common staffing method for specified kinds of health care provision.

Policy Objectives

Section 12IJ of the 1978 Act - which is inserted by section 4 of the Health and Care (Staffing) (Scotland) Act 2019 (the 2019 Act) - sets out a duty for Health Boards and the Common Services Agency for the Scottish Health Service (commonly known as NHS NSS) to follow a common staffing method when determining staffing provision for specific types of health care. The duty extends to certain Special Health Boards (NHS 24, the National Waiting Times Centre Board and the State Hospitals for Board for Scotland). The 2024 Regulations, as amended by the National Health Service (Common Staffing Method) (Scotland) Amendment Regulations 2025 and the National Health Service (Common Staffing Method) (Scotland) Amendment (No. 2) Regulations 2025, make provision in relation to the common staffing method.

The common staffing method sets out a process by which a Health Board, NHS NSS or Special Health Board determines the staffing provision required for certain types of health care. It includes the use of speciality-specific staffing level tools and a professional judgement tool, along with consideration of a range of other factors which include among others the local context, patient needs, clinical advice and the different skills and experience of employees.

The current Regulations amend the 2024 Regulations to update the staffing level and professional judgement tools to be used.

UN Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 Compatibility

In accordance with section 23(2) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024, the Scottish Ministers certify that, in their view, the National Health Service (Common Staffing Method) (Scotland) Amendment Regulations 2026 are compatible with the UNCRC requirements as defined by section 1(2) of that Act.

EU Alignment Consideration
This instrument is not relevant to the Scottish Government's policy to maintain alignment with the EU.

Consultation
Two consultations were carried out during 2017-2018 as part of proposals for the Health and Care (Staffing) (Scotland) Bill, along with a series of stakeholder engagement events across Scotland. Following the passing of the Bill, statutory guidance to support the 2019 Act was prepared by various working groups comprising representatives from the Scottish Government and external stakeholders, including Health Boards, Special Health Boards, NHS NSS, local authorities, integration authorities, Healthcare Improvement Scotland (HIS), the Care Inspectorate, professional bodies, trade unions and professional regulatory bodies. This guidance went out to public consultation in June-September 2023 and was published on 01 April 2024, coinciding with commencement of the 2019 Act.

The Nursing and Midwifery Workload and Workforce Planning Programme (NMWWPP) was established in 2004; part of their remit being to develop workload tools and methodology. Development of each tool involved expert working groups comprising a variety of stakeholders. The staffing level and professional judgement tools specified in the 2024 Regulations were originally developed through this process, endorsed by the Scottish Executive Nurse Directors and professional bodies, and have been recommended for use since April 2013 (with updates to the tools being made since then as required), albeit on a non-statutory footing. The NMWWPP also developed a triangulation process which illustrated the other information that should be considered alongside the staffing level and professional judgement tools when making decisions about staffing. This process formed the basis of the common staffing method. HIS is now responsible for continued management and development of the tools and the common staffing method and regularly consults with stakeholders as part of this.

Impact Assessments
Impact assessments were carried out as part of the Parliamentary passage of the Health and Care (Staffing) (Scotland) Bill. A CRWIA has been produced in relation to the current Regulations. Due to the technical nature of these Regulations, it was considered that no further impact assessments were necessary.

Financial Effects
The Cabinet Secretary confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Staffing level and professional judgement tools have been recommended for use since 2013, and, along with the common staffing method, were being used regularly in many Health Boards prior to the pandemic. Following remobilisation of 2019 Act implementation, Health Boards have put plans in place to run the tools and use the common staffing method. The review process following use of the common staffing method sits within established governance processes within Health Boards. There should therefore be no significant impact as a direct consequence of mandating their continued use through legislation.

Scottish Government
Health Workforce Directorate
January 2026