POLICY NOTE

THE NATIONAL HEALTH SERVICE (COMMON STAFFING METHOD) (SCOTLAND) REGULATIONS 2024

SSI 2024/43

The above instrument was made in exercise of the powers conferred by sections 12IJ(1) and (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 specifies the minimum frequency at which the common staffing method is to be used in relation to specific types of heath care, and 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). These Regulations 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 instrument specifies that the common staffing method must be used no less than once annually. It is only required to be used in relation to certain types of health care, when that health care is provided in specified locations and by specified types of employees, as listed in section 12IK of the 1978 Act. Those kinds of health care provision are ones where a validated speciality-specific staffing level tool is available, and, at present, do not include any kinds of health care provided by NHS NSS or NHS 24.

The Regulations also specify the speciality-specific staffing level tools and the professional judgement tool that should be used as part of the common staffing method for specified kinds of health care provision. 10 specialty-specific staffing level tools are named in the instrument alongside the particular kind of health care provision for which each tool must be used. A single professional judgement tool is also named, which is to be used for all kinds of health care provision listed in the instrument. It is important to prescribe the minimum frequency of use of the common staffing method and the associated tools that must be used. This will enable consistent application across Scotland, make comparisons easier, and give reassurance that data has been obtained from tools that have undergone testing and validation. This is

consistent with the policy aim of the Act, in enabling a rigorous evidence-based approach to decision-making about staffing.

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, the Care Inspectorate, professional bodies, trade unions and professional regulatory bodies. This guidance went out to public consultation in June-September 2023 and feedback will be used to revise and finalise the guidance, to be published on 01 April 2024, to coincide 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 this instrument 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. Healthcare Improvement Scotland 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 and it was considered that no further impact assessments were necessary in relation to these Regulations.

Financial Effects
The Cabinet Secretary for NHS Recovery, Health and Social Care confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

The 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
Chief Nursing Officers Directorate
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