

The Health and Care (Staffing) (Scotland) Act gained Royal Assent on 6 June 2019.

The Act is the first legislation in the UK to set out requirements for safe staffing across both health and care services and most clinical professions.

The Act was almost three years in the making. At RCN Congress 2016 in Glasgow, First Minister of Scotland, Nicola Sturgeon MSP, announced her intention to introduce legislation for staffing for safe and effective care.

Since that landmark Congress, RCN members and staff in Scotland have been working to influence and shape the legislation for the benefit of patients, care home residents and members. Campaigning by RCN members, staff and the public across Scotland resulted in legislation that now meets over 85% of the RCN's asks.

WHAT DOES THE ACT DO?

The Act has two important overarching provisions:

1. The principle that the main purpose of staffing is to provide safe, high quality services and the best outcomes for service users.
2. A duty on NHS and social care providers to make sure that, at all times, there are suitably qualified and competent staff working in the right numbers.

The Act sets out how the overarching principles should be applied across health and social care, including in the commissioning of services. It also specifies different duties for health boards, councils, integration authorities and the Scottish Government to report publicly on compliance with the Act.

In the NHS

Duties on NHS boards to:

- Use the 'common staffing method' in all areas where there are workforce and workload planning tools set out in legislation. This means the approved tools are used alongside other considerations – such as vacancies, skills mix, patient need, clinical advice and staff feedback – to set establishments and inform any service design.
- Have in place ways of identifying, assessing and escalating real-time risks to care, arising because of staffing issues, and to ensure staff are aware of these, and relevant staff have appropriate training and time and resources to implement them.
- Have in place ways to address severe and recurrent risks in the board.
- Seek and have regard to clinical advice in making staffing decisions, to record their decisions and explain where this conflicts with clinical advice and to have a procedure for those involved in the risk process to record disagreements with decisions and request reviews.
- Establish a procedure for individuals with lead clinical professional responsibility (i.e., the Director of Nursing and Medical Director) to provide a compliance report quarterly.
- Ensure lead clinical professionals have the time to do their jobs properly.
- Give time and resources to staff for relevant training.

- Encourage and support staff to give views about staffing and to tell staff about decisions made.
- Limit the amount an NHS board can pay to agency staff without reporting to Scottish Government.
- Send annual reports on how the legislation is working to Scottish Government, and for the government to then report to the Scottish Parliament.

Duties on Scottish Government to:

- 'Take all reasonable steps' to ensure registered nursing supply, with an annual report to the Scottish Parliament on this.
- Consult with appropriate professional bodies and trade unions when writing guidance to the legislation.
- Add new tools, or remove old ones, from the legislation and/or to amend the common staffing method.

Duties on Healthcare Improvement Scotland (HIS) to:

- Monitor how the legislation is working in boards.
- Review the common staffing method, in consultation with relevant trade unions and professional bodies and make recommendations for changes to government.
- Maintain workforce and workload tools, and develop new ones, in consultation with relevant trade unions and professional bodies.
- Recommend changes to government.

In social care:

Duties in social care:

- On providers to provide appropriate training for their staff, including suitable assistance to gain relevant qualifications.
- On Ministers to:
 - » Give an annual report to the Scottish Parliament about the operation of the legislation.
 - » Take this report into account in determining supply of registered nurses and other registered professionals.
 - » Consult with relevant professional bodies and trade unions when preparing guidance on the legislation.

Other powers:

- For the Care Inspectorate to develop and maintain staffing methods for care homes for adults (in the first instance), in collaboration with relevant trade unions and professional bodies.
- For Scottish Ministers to require the use of tools, or to end such a requirement where the tool is no longer appropriate.
- For the Care Inspectorate to carry out reviews of the operation of the legislation and report to Ministers.

WHAT NEXT?

The passing of the Act is the starting point for the next phase of the RCN's work to ensure effective legislation in Scotland. There is a long road to navigate before the legislation comes into force – statutory guidance still needs to be written and organisations and staff have to prepare for change. This will not be a quick process, and there are also many other issues the RCN has to influence alongside the Act – from student numbers to workplace culture. The engagement of members will be key to getting this right.

FIND OUT MORE

RCN Scotland

www.rcn.org.uk/scotland/get-involved/safestaffingscotland-campaign

RCN UK

www.rcn.org.uk/employment-and-pay/safe-staffing

Health and Care (Staffing) (Scotland) Act

www.legislation.gov.uk/asp/2019/6/enacted

The RCN represents nurses and nursing, promotes excellence in practice and shapes health policies. With over 40,000 members in Scotland, the RCN is the voice of nursing.

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