

## 2. Appropriate Staffing: The Health and Care Staffing (Scotland) Act 2019

### What is the Health and Care (Staffing) (Scotland) Act 2019 legislation about?

The Health and Care (Staffing)(Scotland) Act 2019 (**HCSA**) provides a statutory basis for the provision of appropriate staffing in health and care services. HCSA makes it a **duty** for care service providers to ensure appropriate staffing. This means providers of a care service must always ensure that, suitably qualified and competent staff are working in the **care service** and that the number of staff is appropriate. Read the full legislation [here](#).

### The main purposes of the Health and Care (Staffing) (Scotland) act are:

- to provide safe and high-quality care
- to ensure the best care outcomes for people who use services *and in so far as it affects either of those matters*, the wellbeing of staff.

### Staffing for care services is to be arranged in response to the guiding principles:

1. improving standards and outcomes for service users
2. taking account of individual needs, abilities, characteristics of people
3. respecting the dignity and rights of people
4. taking account of the views of staff and people experiencing services
5. ensuring the wellbeing of staff
6. being open with staff, individual and families about staffing decisions
7. allocating staff efficiently and effectively, and
8. promoting multi-disciplinary services.

### HCSA Part 3 Section 7 places a duty on care service providers to ensure appropriate staffing.

- (1) Any person who provides a care service must ensure that at all times suitably qualified and competent individuals are working in the care service in such numbers as are appropriate for
  - (a) the health, wellbeing, and safety of service users,
  - (b) the provision of safe and high-quality care, and
  - (c) in so far as it affects either of those matters, the wellbeing of staff.
- (2) In determining what constitutes appropriate numbers for the purposes of subsection (1), regard is to be had to
  - (a) the nature of the care service,
  - (b) the size of the care service,
  - (c) the aims and objectives of the care service,
  - (d) the number of service users, and
  - (e) the needs of service users.



### What constitutes staffing within a care service?

- ✓ Employees of the care service
- ✓ Agency and other temporary/ contract workers
- ✓ Self-employed workers
- ✓ Apprenticeship schemes and other 'earn as you learn' schemes who are employed by the care service
- ✓ All volunteers

This includes nursing and care staff, housekeeping, catering maintenance, volunteers, and those staff supporting social activities and engagement in the community. Supernumerary staff such as students are not counted as a part of the staffing establishment.

### Appropriate staffing must take account of following factors:

- current staffing levels and any vacancies
- the local context in which the care service is provided
- the location, the type of care service, aims and objectives and demographic factors
- the physical environment in which a care service is provided
- the quality of care and the assessed needs of the people who use the care service
- feedback from people experiencing care including family members and carers
- feedback from staff working in the care service
- recommendations from health and social care professionals
- care services standards and outcomes including the [Health and Social Care Standards](#)
- indicators or measures of the quality of care
- relevant clinical evidence, research, and published guidance.

### What will this mean in respect of appropriate staffing?

The HCSA does not prescribe or set staffing numbers, skill mixes, or minimum staffing levels. The Care Inspectorate no longer issue staffing schedules. Minimum staffing ratios are used in early learning and childcare services (ELC). **Part 3 section 7 of the HCSA** outlines the duty on care services to ensure appropriate staffing (see the table below). It details how you should determine what constitutes appropriate staffing levels. Services need to fully consider how many staff they need to provide safe high-quality care.

**Table 1 demonstrates similarities between previous legislation (now repealed) and the HCSA.**

The Social Care and Social Work Improvement Scotland (Requirements for Care Services) Regulations 2011. SSI 2011 No. 210 Regulation 15: Staffing (now repealed)	Health and Care (Staffing) (Scotland) Act 2019 (Part 3 Section 7)
	*and in so far as it affects the main purposes, the wellbeing of staff
Have regard to the size and nature	Have regard to the nature and size of the care service
Aims and objectives	Aims and objectives
Numbers of needs of people	Number and needs of people experiencing care



Suitably qualified and competent staff are working in the care service in such numbers as are appropriate for the health, welfare, and safety of service users	Suitably qualified and competent individuals are working in the care service for the health, wellbeing and safety of people experiencing care
Ensure employees receive appropriate training	Staff receive appropriate training for the work they are to perform
Suitable assistance, including time off work, for the purpose of obtaining further qualifications appropriate to such work	Suitable assistance, including time off work, for the purpose of obtaining further qualifications appropriate to their work

The similarities between previous legislation the new HCSA is evident with the exception of 'in so far as it affects the main purposes, the wellbeing of staff'. This is a new addition to current legislation. Many services will already have measures in place to consider and evidence appropriate staffing and staff wellbeing. Services must demonstrate how they meet the requirements of the new legislation.

Registered care homes for adults and older people should refer to the [Staffing Method Framework \(SMF\)](#). Scottish Ministers asked the Care Inspectorate to develop and recommend a SMF, initially for adult care homes only. We may develop staffing methods for other registered care services as ministers specify. Elements of the SMF for care homes may be helpful to other services.

The new legislation should not hinder providers from developing innovative and effective models of care delivery and workforce planning. It promotes flexible, local decision-making with opportunities to redesign services. It supports open, transparent, and participatory approaches to staffing with the inclusion of people, families and professional carers in decisions around staffing.

The HCSA builds on existing standards and regulations for staffing in Scotland. This includes the [Health and Social Care Standards](#) and the [Care Inspectorate's Quality Frameworks](#).

### What would help evidence appropriate staffing?

- ✓ Care plans with information on which to base decisions, with evidence that individuals and the people closest to them were involved in creating and agreeing the plans.
- ✓ People able to make decisions because staff promote their rights and choices.
- ✓ Staffing resources that support individuals planned or assessed needs and goals.
- ✓ Staff supporting people to take risks which promote independence.
- ✓ Following good practice for recruitment, induction, training, competency observations and supervision.
- ✓ Diversity in the workforce across protected characteristics to support choice, privacy, and dignity.
- ✓ Variations in staffing for day and nighttime routines, social events, mealtimes, and end of life care.



- ✓ The promotion of staff wellbeing through the use of champions, resources, and specific assessments.
- ✓ Flexible staff rostering which includes time for shift changeovers whilst maintaining safe cover.
- ✓ Flexible shifts which consider the needs and wishes of people who use services, and the needs of staff.
- ✓ Senior staff and key workers with opportunities to attend professional meetings and care reviews.
- ✓ Increasing the use of technology to enhance care and maintain safety.

### **Professional judgement**

This requires providers, leaders, and managers to assess staffing requirements. It will be based on their professional opinion of the current workload and the local context. It is important to record staffing information, decisions and outcomes based on the management of risk and professional judgement.

### **Quality Assurance and Audit**

Self-evaluation and quality assurance processes cover key areas of practice in registered care services. Managers and senior staff should have enough time to carry out regular quality assurance and to evaluate the findings. Audits, observations of practice, checks and measurements will produce important information about staffing. Tracking data over time will help with the identification of trends or inconsistent practice. Providers should communicate key findings to staff, families and people who experience care. They should ensure they can raise concerns about staffing without fear of retribution.

[Care Inspectorate: Safe Staffing Programme](#)

[Staffing Method Framework](#)

[The Hub](#)

[Guidance for providers on the assessment of staffing levels in premises based services](#)

[Personal plans guide: adults](#)

[Raising concerns in the workplace](#)

[Safer recruitment through better recruitment](#)

[NMC: safe staffing guidelines](#)

[HCSA Statutory Guidance](#)