

## 6. Reporting Duties, Planning Securing and Commissioning Services: The Health and Care Staffing (Scotland) Act 2019

### What is the new 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. This is to enable safe, high-quality care and improved outcomes for people experiencing care. This guide summarises the guiding principles of the Health and Care (Staffing) (Scotland) Act 2019. In carrying out the duty relating to staffing imposed by HCSA any person who provides a registered care service must have regard to the guiding principles for health and care staffing. [Read the full legislation here.](#)

### The main purposes of the HCSA 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.

### The guiding principles are:

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.

### Guiding principles in planning, securing, and commissioning services

In planning or securing the provision of a care service from another person under a contract, agreement or other arrangements, every local authority and every integration authority (within the meaning of section 59 of the Public Bodies (Joint Working)(Scotland) Act 2014) **must have regard to the guiding principles for health and care staffing, and the duties relating to staffing imposed on persons who provide care service by virtue of subsection (1) and sections 7 to 10, and by virtue of Chapters 3 and 3A of Part 5 of the Public Services Reform(Scotland) Act 2010.**

Requirements of the HCSA are only one part of a larger commissioning cycle. There are many factors to be considered when planning or securing the provision of a care service. For this reason, refer to existing guidance on commissioning health and social care services such as the [Strategic Commissioning Plans Guidance.](#)

In practice, relevant organisations will have existing procurement and commissioning strategies in place. Consideration of the HCSA will form part of and be included in future processes.

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Evidence organisations may consider, when planning or securing care services may include;

- Care Inspectorate inspection reports,
- previous enforcement action,
- care inspectorate datastore,
- processes in place for the provider to implement the requirements of the HCSA,
- previous experience of commissioning, or working with, the provider,
- other relevant inspections, contract monitoring, and audits,
- notifications and complaints,
- TURAS safety huddle tool for care homes to help identify emerging risks, trends, and issues.

This information should be used in a manner which is compliant with applicable procurement rules.

### Integration and local authority reporting

By 30 June after the end of each financial year, every local authority, and every integration authority (within the meaning of section 59 of the Public Bodies (Joint Working) (Scotland) Act 2014) must publish information

1. on the steps they have taken and
2. any ongoing risk that may affect their ability to comply with the guiding principles and the duties relating to staffing imposed on persons who provide care services.

This means the new legal framework becomes a relevant part of the planning of such services, as well as their delivery. This creates a duty on local authorities and integration authorities to report to Scottish Ministers on how they have complied with the guiding principles and any risks that may affect their ongoing ability to do so.

Integration and Local Authorities are advised to access the reporting template from the Scottish Government's HCSA Implementation Team. The email to request the reporting template and direct all other enquiries about the HCSA is [HCSA@gov.scot](mailto:HCSA@gov.scot)

### Scottish Government Annual Report on Staffing in Care Services

As soon as reasonably practicable after the end of each financial year, the Scottish Ministers must then publish, and lay before the Scottish Parliament, a report setting out

- (a) a summary of how the duties imposed by sections 3, 7 (staffing) and 8 (qualifications) on persons who provide, plan and secure care services are being discharged,
- (b) the effect that staffing levels in care services have on the discharge of those duties,

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- (c) the steps that Ministers have taken to support staffing levels in care services to assist the discharge of those duties,
- (d) how the matters mentioned in paragraphs (a), (b) and (c) will be taken into account in determining the future supply of registered nurses, medical practitioners, and other care professionals as the Scottish Ministers consider relevant to discharge the duties imposed,
- (e) and the steps Ministers have taken to ensure funding is available to any person who provides a care service.

### SG Responses to Local Authorities and Integration Authorities FAQs on HCSA Reporting Questions

#### 1. Q Why do the annual reporting dates differ for NHS Health Boards (30 April) and LA /ILs (30 June)

The date that all local authorities (LA) and integration authorities (IA) must publish their annual Health and Care (Staffing)(Scotland) Act 2019, (HSCA) report and send a copy to the [HCSA@gov.scot](mailto:HCSA@gov.scot) mailbox is 30 June.

The original date of 30 April was changed following a consultation process which concluded last year. The Scottish Government collated the feedback received from multiple stakeholders. This informed minor changes to the statutory guidance which included a change to the reporting date for LA and IA.

**This was the only date change in relation to reporting. All other agencies must report by the 30 April as stated in the statutory guidance.**

#### 2. Q What should a LA / IA report on

***The statutory duty at Section 3(2) of the Act states that: In planning or securing the provision of a care service from another person under a contract, agreement or other arrangements, every local authority and every integration authority must have regard to:***

- *the guiding principles for health and care staffing (section 1 of the Act);*
- *the duty on care service providers to have regard to the guiding principles (section 3(1) of the Act);*
- *the duty on care service providers to ensure appropriate staffing (section 7 of the Act);*
- *the duty on care service providers with regard to the training of staff (section 8 of the Act);*
- *the duty on Scottish Ministers to report to Parliament on staffing in care services (section 9 of the Act);*

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- *the duty on care service providers to have regard to guidance issued by the Scottish Ministers (**section 10 of the Act**);*
- *the duties relating to staffing imposed on care service providers under [Chapter 3 of Part 5 of the Public Services Reform \(Scotland\) Act 2010](#); and*
- *the duties relating to staffing imposed on care service providers under [Chapter 3A of Part 5 of the Public Services Reform \(Scotland\) Act 2010](#). Note that the [Health and Care \(Staffing\) \(Scotland\) Act 2019](#) inserted chapter 3A into the Public Services Reform (Scotland) Act.*

***How that is achieved and implemented, via the relevant contract, agreement or similar arrangement, is for local authorities and integration authorities to consider, to include what provision should be made as regards monitoring, reviewing and termination of services.***

Therefore LA and IA should only report on services which have been planned or secured in in that financial year as highlighted in the first paragraph above. No LA or IA should complete this retrospectively.

The second part of this paragraph '***How that is achieved and implemented***' refers only to how LA and IA choose to then monitor their contracts and service provision in line with the HCSA. However, it does not mean they should report on this activity.

### **3. Q What is the reporting expectation where a service is secured by LA/IA for one or more years, with an option to extend for one or more years (including other similar options/variations).**

Reporting under the HCSA is only for services planned or secured in that year. It is up to the LA /IA to self-assess and decide if they should/need to add the plus one or more years to the annual reporting in which it occurs.

The Scottish Government have left the guidance flexible so LA and IA can self-assess and make decisions based on what they believe is right for them. They understand all provision will be monitored in accordance with local and national guidance and legislation out with the HCSA.

### **4. Q Expectations for Scotland Excel, COSLA /other agencies supporting commissioning**

All agencies which support the social care sector through commissioning have been informed about the HCSA. They are aware that all registered services must comply with the Act and that LA and IA must report on services planned and secured within each financial year.

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If you have any questions or concerns in relation to the frameworks or service provision you must take this up directly with the body who has developed the framework.

Scottish Government has published statutory guidance to accompany the Act and local and integration authorities must have regard to this; [chapter 15 of the statutory guidance](#) covers the planning and securing of care services.

### Guidance issued by Scottish Government on the HCSA

Every local authority and every integration authority must have regard to any guidance issued by the Scottish Ministers when planning or securing the provision of a care service from another person under a contract, agreement, or other arrangements.

Before issuing guidance, Scottish Ministers must consult the Care Inspectorate, representatives of the providers, commissioners and users of care services, trade unions and professional bodies representative of individuals working in care services, persons as they consider to be representative of carers and other persons as appropriate. The Scottish Ministers must publish any guidance issued.

### Care Inspectorate

The Care Inspectorate has a duty to develop and recommend to the Scottish Ministers staffing methods for use by persons who provide care home services for adults (initially), and such other registered care services as the Scottish Ministers may by regulations specify.

The Care Inspectorate may as it considers appropriate, conduct reviews of the effectiveness of the operation of the duty under section 7 (staffing) of the HCSA and may publish a report to the Scottish Ministers on the operation of that duty.

[Strategic Commissioning Plans Guidance.](#)  
[Care Inspectorate: Safe Staffing Programme](#)  
[HCSA Statutory Guidance](#)  
[The Hub](#)