

Health and Care (Staffing) (Scotland) Bill

1st Marshalled List of Amendments for Stage 2

The Bill will be considered in the following order—

Sections 1 to 14

Long Title

Amendments marked * are new (including manuscript amendments) or have been altered.

Section 1

Monica Lennon

- 81 In section 1, page 1, line 7, leave out <purpose> and insert <purposes>

Monica Lennon

- 82 In section 1, page 1, line 7, leave out <is> and insert <are—
()>

Alex Cole-Hamilton

- 1 In section 1, page 1, line 8, after <services> insert <and to ensure the health, wellbeing and safety of service users>

Monica Lennon

- 83 In section 1, page 1, line 8, at end insert <and
() to ensure the best health care outcomes for service users,>

Alex Cole-Hamilton

- 2 In section 1, page 1, line 10, at end insert—
<() ensuring the health, wellbeing and safety of service users,>

Jeane Freeman

- 8 In section 1, page 1, line 10, at end insert—
<() improving standards and outcomes for service users,>

Jeane Freeman

- 9 In section 1, page 1, line 17, leave out <allocating staff efficiently and effectively> and insert <making the best use of the available individuals, facilities and resources>

Jeane Freeman

- 10 In section 1, page 1, line 17, at end insert <and,
() promoting multi-disciplinary services as appropriate.>

Alex Cole-Hamilton

- 11 In section 1, page 1, line 22, at end insert—
<“multi-disciplinary services” means health care or care services delivered together by individuals from such a range of professional disciplines as necessary in order to meet the needs of, and improve standards and outcomes for, service users,>

Jeane Freeman

- 12 In section 1, page 1, line 24, at end insert—
<“standards and outcomes for service users” means—
(a) in relation to health care, the standards and outcomes published by the Scottish Ministers under section 10H of the National Health Service (Scotland) Act 1978, and
(b) in relation to care services, the standards and outcomes published by the Scottish Ministers under section 50 of the Public Services Reform (Scotland) Act 2010.>

Section 2

Miles Briggs

- 84 In section 2, page 2, line 9, after <must> insert <—
() take all reasonable steps to ensure that the person is provided with sufficient funds through the contract, agreement or arrangements to provide the service with appropriate staffing arrangements, and
()>

Monica Lennon

- 85 In section 2, page 2, line 12, at end insert—
<(3) As soon as reasonably practicable after the end of each financial year, every Health Board and the Common Services Agency for the Scottish Health Service must provide information to the Scottish Ministers as on the steps they have taken to comply with subsections (1) and (2).
(4) Information provided under subsection (3) must set out how the steps taken by the Health Board or (as the case may be) Common Services Agency for the Scottish Health Service to comply with subsections (1) and (2) have improved outcomes for service users.
(5) As soon as reasonably practicable after the end of each financial year, the Scottish Ministers must collate information received under subsection (3) into a combined report to be laid before the Scottish Parliament.
(6) A report laid under subsection (5) must set out—

- (a) the steps taken by Health Boards and (as the case may be) the Common Services Agency for the Scottish Health Service to comply with subsections (1) and (2), and
- (b) the steps that the Scottish Ministers will take in relation to the staffing of the health service in response to the report's conclusions and recommendations.>

Section 3

Miles Briggs

- 86 In section 3, page 2, line 20, after <must> insert <—
- () take all reasonable steps to ensure that the person is provided with sufficient funds through the contract, agreement or arrangements to provide the service with appropriate staffing arrangements, and
- ()>

Monica Lennon

- 87 In section 3, page 2, line 23, after <of > insert <this section and>

David Stewart

- 88 In section 3, page 2, line 25, at end insert—
- <() the duty imposed on them by virtue of section (*Duty on commissioners of care services to ensure appropriate resources*).>

Jeane Freeman

- 13 In section 3, page 2, line 25, at end insert—
- <(3) Every local authority and every integration authority must have regard to any guidance issued by the Scottish Ministers about the operation of subsection (2).
- (4) Before issuing such guidance, the Scottish Ministers must consult—
- (a) Social Care and Social Work Improvement Scotland,
 - (b) such persons as they consider to be representative of the providers, commissioners and users of care services,
 - (c) such trade unions and professional bodies as they consider to be representative of individuals working in care services,
 - (d) such persons as they consider to be representative of carers (within the meaning of section 1 of the Carers (Scotland) Act 2016), and
 - (e) such other persons as they consider appropriate.
- (5) The Scottish Ministers must publish any guidance issued under subsection (3).>

Monica Lennon

89 In section 3, page 2, line 25, at end insert—

- <(3) As soon as reasonably practicable 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 provide the Scottish Ministers with information on—
 - (a) the steps they have taken, and
 - (b) any ongoing risk that may affect their ability,to comply with subsection (2).
- (4) Information provided under subsection (3) must set out how the steps taken by the local authority or (as the case may be) integration authority to comply with subsection (2) have improved outcomes for service users.
- (5) As soon as reasonably practicable after the end of each financial year, the Scottish Ministers must collate the information provided to them under subsection (3) into a combined report to be laid before the Scottish Parliament.
- (6) A report laid under subsection (5) must set out—
 - (a) the steps taken by local authorities and (as the case may be) integration authorities to comply with subsection (2),
 - (b) any ongoing risk that may affect the ability of the local authority or (as the case may be) integration authority to comply with subsection (2),
 - (c) the steps that the Scottish Ministers will take in relation to the staffing of social care services in response to the report’s conclusions and recommendations.>

Section 4

Jeane Freeman

14 In section 4, page 2, line 34, after <individuals> insert <, from such a range of professional disciplines as necessary,>

Alex Cole-Hamilton

3 In section 4, page 2, line 36, after <patients> insert <and staff>

Alex Cole-Hamilton

4 In section 4, page 2, line 37, after <of> insert <safe and>

Alex Cole-Hamilton

5 In section 4, page 2, line 37, after <care> insert <and services>

Jeane Freeman

15 In section 4, page 2, line 37, at end insert <and,
(c) in so far as it affects either of those matters, the wellbeing of staff.>

Jeane Freeman

16 In section 4, page 2, line 37, at end insert—

- <(2) In determining what, in a particular kind of health care provision, constitutes appropriate numbers for the purposes of subsection (1), regard is to be had to—
 - (a) the nature of the particular kind of health care provision,
 - (b) the local context in which it is being provided,
 - (c) the number of patients being provided it,
 - (d) the needs of patients being provided it, and
 - (e) appropriate clinical advice.>

Jeane Freeman

17 In section 4, page 2, line 37, at end insert—

<12IAA Duty to have real-time staffing assessment in place

- (1) It is the duty of every Health Board and the Agency to put and keep in place arrangements for the real-time assessment of its compliance with the duty imposed by section 12IA.
5
- (2) The arrangements under subsection (1) must, in particular, include—
 - (a) a procedure for the identification, by any member of staff, of any risks caused by staffing levels to—
 - (i) the health, wellbeing and safety of patients,
 - (ii) the provision of high-quality health care, or
10
 - (iii) in so far as it affects either of those matters, the wellbeing of staff.
 - (b) a procedure for the mitigation of any such risks, so far as possible, by the individual with lead clinical professional responsibility where the risk was identified, and
15
 - (c) raising awareness among staff about the procedures described in paragraphs (a) and (b).

12IAB Duty to have risk escalation process in place

- (1) It is the duty of every Health Board and the Agency to put and keep in place arrangements for the escalation of any risk—
20
 - (a) identified during the real-time assessment of its staffing levels in accordance with arrangements put in place under section 12IAA, and
 - (b) which it has not been possible to mitigate in accordance with the arrangements put in place under that section.
- (2) The arrangements under subsection (1) must, in particular, include—
25
 - (a) a procedure for the initial reporting of a risk as described in subsection (1), by the individual with lead clinical professional responsibility where the risk was identified, to a more senior decision-maker in the clinical professional structure,

- 30 (b) a requirement for any such decision-maker to seek appropriate clinical advice, as necessary, in reaching a decision on the risk,
- (c) a procedure for the onward reporting of the risk, as necessary, to a more senior decision-maker in turn, and a requirement for that decision-maker in turn to seek appropriate clinical advice, as necessary, in reaching a decision on the risk,
- 35 (d) a procedure for the notification of every decision made following the initial report, and the reasons for it, to—
- (i) any individual who was involved in identifying the risk in accordance with the arrangements put in place under section 12IAA(2)(a),
- 40 (ii) any individual who was involved in attempting to mitigate the risk in accordance with the arrangements put in place under section 12IAA(2)(b),
- (iii) any individual who was involved in reporting the risk in accordance with the arrangements put in place under paragraph (a) or (c) of this subsection, and
- 45 (iv) any individual who gave clinical advice in accordance with the arrangements put in place under paragraph (b) or (c) of this subsection,
- (e) a procedure for those individuals to record any disagreement with any decision made following the initial report, and
- 50 (f) raising awareness among staff about the procedures described in paragraphs (a) to (e).>

David Stewart

- 17A As an amendment to amendment 17, line 7, after <identification,> insert <and notification to an individual with lead clinical professional responsibility,>

David Stewart

- 17B As an amendment to amendment 17, line 12, leave out second <the> and insert <an>

David Stewart

- 17C As an amendment to amendment 17, line 15, leave out <raising awareness among staff about> and insert <steps to be taken by the Health Board or Agency to raise awareness of, and enable and encourage employees to make use of,>

David Stewart

- 17D As an amendment to amendment 17, line 16, at end insert—
- <(3) As soon as reasonably practicable after the end of each financial year, every Health Board and the Agency must publish, and submit to the Scottish Ministers, information on the operation of the real-time staffing assessment and steps taken to mitigate any risk identified in the assessment.>

David Stewart

17E As an amendment to amendment 17, line 26, leave out first <the> and insert <an>

David Stewart

17F As an amendment to amendment 17, line 29, after <seek> insert <, and have regard to,>

David Stewart

17G In an amendment to amendment 17, line 33, after <seek> insert <, and have regard to,>

David Stewart

17H As an amendment to amendment 17, line 51, leave out <raising awareness among staff about> and insert <steps to be taken by the Health Board or Agency to raise awareness of, and enable and encourage employees to make use of,>

David Stewart

17I As an amendment to amendment 17, line 52, at end insert—

<() As soon as reasonably practicable after the end of each financial year, every Health Board and the Agency must publish, and submit to the Scottish Ministers, information on the operation of the risk escalation process and steps taken to mitigate any risk identified in the assessment.>

Anas Sarwar

80 In section 4, page 2, line 37, at end insert—

<12IAC Duty to ensure appropriate staffing: agency workers

- (1) Where, in order to comply with the duty under section 12IA, a Health Board or the Agency secures the services of an agency worker (within the meaning of the Agency Workers Regulations 2010), that Health Board or the Agency (as the case may be) must comply with subsection (2).
- (2) The maximum amount to be paid to secure the services of that worker during a period must not exceed 150% of the amount that would be paid to a full-time equivalent employee of the Health Board or the Agency to fill the equivalent post for the same period.
- (3) In exceptional circumstances, a Health Board or the Agency may apply to the Scottish Ministers for authorisation to pay an amount higher than the amount prescribed in subsection (2).
- (4) As soon as reasonably practicable after the end of each financial year, the Scottish Ministers must publish information on—
 - (a) the number of applications they received under subsection (3) in that financial year, and
 - (b) the number of such applications that were authorised.>

Alison Johnstone

90 In section 4, page 2, line 37, at end insert—

<12IAD Duty to ensure appropriate staffing: number of registered healthcare professionals etc.

- (1) The Scottish Ministers must ensure that there is a sufficient number of—
 - (a) registered nurses,
 - (b) registered midwives,
 - (c) medical practitioners, and
 - (d) such other types of employees as the Scottish Ministers may by regulations prescribe,available to every Health Board and the Agency to enable the Health Board and the Agency to comply with the duty in section 12IA.
- (2) In fulfilling their obligations under subsection (1), the Scottish Ministers must have regard to—
 - (a) the number of people training for professions mentioned in or by virtue of subsection (1) in Scotland, and
 - (b) any information provided to them by a Health Board or the Agency about how it has carried out its duties under this Act.
- (3) As soon as reasonably practicable after the end of each financial year, the Scottish Ministers must lay before the Parliament a report setting out—
 - (a) how they have complied with subsection (1), and
 - (b) how having regard to the things mentioned in subsection (2) enabled Health Boards or the Agency to comply with subsection (1).>

Alison Johnstone

91 In section 4, page 2, line 37, at end insert—

<12IAE Duty to ensure appropriate staffing: senior registered nurses

- (1) In complying with the duty in section 12IA, every Health Board and the Agency must ensure that a senior registered nurse in each rostered location is non-caseload holding.
- (2) For the purposes of this section—

“caseload holding” means a registered nurse required to meet the needs of a proportion of the patients in a rostered location,

“senior registered nurse” means a registered nurse with such level of qualifications, training and experience, role and other requirements as the Scottish Ministers may by regulations prescribe,

“rostered location” means an area such as a ward, operating theatre or community team providing nursing care.>

Alison Johnstone

124 In section 4, page 2, line 37, at end insert—

<12IAF Duty to ensure appropriate staffing: training of staff

To comply with the duty under section 12IA, every Health Board or the Agency must ensure that individuals working for the Health Board or the Agency receive—

- (a) appropriate training for the work they are to perform, and
- (b) suitable assistance, including time off work, for the purpose of obtaining further qualifications appropriate to their work.>

Jeane Freeman

18 In section 4, page 3, line 3, leave out <must follow> and insert <must, no less often than at the frequency specified in regulations by the Scottish Ministers, use>

Miles Briggs

93 In section 4, page 3, line 4, at end insert—

<(1A) The purpose of the common staffing method is to set a staffing establishment figure for a particular kind of health care provision at a particular location by employees of a particular kind.

(1B) For the purposes of subsection (1A), “staffing establishment” means the total number of suitably qualified and competent employees of a particular kind required to meet the average workload in a particular location in order to comply with the duty in section 12IA.>

Miles Briggs

94 In section 4, page 3, line 10, after <relevant> insert <—

(i)>

Miles Briggs

95 In section 4, page 3, line 12, at end insert—

<(ii) guidelines published by professional and improvement organisations,

(iii) peer-reviewed evidence,>

Jeane Freeman

19 In section 4, page 3, line 14, at end insert—

<(ia) the different skills and levels of experience of its employees,>

Jeane Freeman

20 In section 4, page 3, line 14, at end insert—

<() the role and professional duties, in particular, of any individual with lead clinical professional responsibility for the particular type of health care,>

David Stewart

96 In section 4, page 3, line 14, at end insert—

<() the impact on other health care professions and staff,>

Miles Briggs

97 In section 4, page 3, line 15, at end insert—

<() patient needs,
() appropriate clinical advice,>

Miles Briggs

98 In section 4, page 3, line 17, at end insert—

<() experience gained from using the real-time assessment arrangements under section 12IAA(1) and the risk escalation process under section 12IAB(1),>

Jeane Freeman

21 In section 4, page 3, line 18, after <patients> insert <, and by individuals who have a personal interest in their health care (for example family members and carers within the meaning of section 1 of the Carers (Scotland) Act 2016),>

Miles Briggs

99 In section 4, page 3, line 21, at end insert—

<(ca) identifies and takes all reasonable steps to mitigate any risks, and>

Miles Briggs

100 In section 4, page 3, line 22, leave out <(c)> and insert <(ca)>

Miles Briggs

101 In section 4, page 3, line 22, leave out from <and> to end of line 26

Jeane Freeman

22 In section 4, page 3, line 37, leave out from <and> to the end of line 39

Miles Briggs

102 In section 4, page 3, line 39, at end insert <and

() any national care assurance framework, to be taken into account in like manner to the measures referred to in subsection (2)(b).>

Jeane Freeman

- 23 In section 4, page 4, line 3, leave out <a location and by employees of a kind> and insert <any one of the kinds of locations and by any one of the kinds of employees>

Jeane Freeman

- 24 In section 4, page 4, line 6, in the second column, leave out <of 15 beds or more> and insert <with 17 occupied beds or more on average>

Jeane Freeman

- 25 In section 4, page 4, line 8, in the second column, leave out <Hospitals and community settings> and insert—

<Hospitals
Community settings>

Jeane Freeman

- 26 In section 4, page 4, line 15, in the third column, leave out <Registered nurses and medical practitioners> and insert—

<Registered nurses
Medical practitioners>

Jeane Freeman

- 27 In section 4, page 4, line 17, in the second column, leave out <Hospitals and community settings> and insert—

<Hospitals
Community settings>

Jeane Freeman

- 28 In section 4, page 4, line 19, in the second column, leave out <Mental health and learning disability units in hospitals> and insert—

<Mental health units in hospitals
Learning disability units in hospitals>

Jeane Freeman

- 29 In section 4, page 4, line 22, in the third column, leave out <Registered midwives and registered nurses> and insert—

<Registered midwives
Registered nurses>

Jeane Freeman

- 30 In section 4, page 4, leave out lines 26 and 27

Jeane Freeman

- 31 In section 4, page 4, line 28, in the second column, leave out <of 14 beds or fewer> and insert <with 16 occupied beds or fewer on average>

Jeane Freeman

- 32 In section 4, page 5, line 1, leave out <persons> and insert <individuals>

Jeane Freeman

- 33 In section 4, page 5, line 2, leave out <person> and insert <individual>

Jeane Freeman

- 34 In section 4, page 5, line 3, at end insert—
- <(2A) But those references do not include individuals who are engaged in a course of studies in order to be admitted to—
 - (a) the register of members maintained by the Nursing and Midwifery Council under section 60 of the Health Act 1999, or
 - (b) the register of medical practitioners maintained by the General Medical Council under section 2 of the Medical Act 1983 (with the exception of persons who are already provisionally registered under section 15 of that Act).>

Jeane Freeman

- 35 In section 4, page 5, line 4, leave out <and (2)> and insert <to (2A)>

Jeane Freeman

- 36 In section 4, page 5, line 5, leave out from <(including> to the end of line 6 and insert <, including where and by whom it is provided (for example, so as to add to the third column of the table in subsection (1) employees of a kind included in the register of members maintained by the Health and Care Professions Council under section 60 of the Health Act 1999).>

Miles Briggs

- 103 In section 4, page 5, line 10, after <encourage> insert <and support>

Alex Cole-Hamilton

- 6 In section 4, page 5, line 13, after <practice> insert <, and areas for improvement,>

Miles Briggs

- 104 In section 4, page 5, line 14, after <employees> insert <(including, in particular, employees of a type mentioned in the third column of the table in section 12IC(1))>

Miles Briggs

- 105 In section 4, page 5, line 14, leave out <on how to use it> and insert <, the real-time assessment arrangements under section 12IAA(1) and the risk escalation process under section 12IAB(1) on how to use them>

Miles Briggs

- 106 In section 4, page 5, line 16, after <method> insert <, the real-time assessment arrangements under section 12IAA(1) and the risk escalation process under section 12IAB(1)>

David Stewart

- 107 In section 4, page 5, line 23, at end insert—

<12IDA Risk management protocol

- (1) Every Health Board and the Agency must establish a risk management protocol.
- (2) The purpose of a risk management protocol established under subsection (1) is to—
 - (a) identify,
 - (b) monitor, and
 - (c) assess,risk associated with complying with the duty in section 12IA.
- (3) A risk management protocol established under subsection (1) must—
 - (a) set out the steps to be taken by the Health Board or Agency to mitigate any risk associated with complying with the duty in section 12IA,
 - (b) set out the steps which may be taken by employees of the Health Board or the Agency to mitigate risk associated with complying with the duty in section 12IA,
 - (c) set out the steps which may be taken by employees of the Health Board or the Agency in seeking local resolution associated with complying with the duty in section 12IA,
 - (d) set out the steps to be taken by the Health Board or the Agency to enable and encourage employees to escalate risk associated with complying with the duty in section 12IA,
 - (e) be developed, and from time to time reviewed, by the designated person, taking into account the views of employees of the Health Board or the Agency.
- (4) As soon as reasonably practicable after the end of each financial year, every Health Board and the Agency must publish, and submit to the Scottish Ministers, information on the operation of the risk management protocol and steps taken to mitigate any risk identified in the protocol.
- (5) In this section—

“designated person” means an employee designated by the Health Board or the Agency to manage the risk management protocol,

“escalate” means to seek assistance from beyond the local context in which health care is provided to mitigate or resolve risk,

“local resolution” means to mitigate or resolve risk within the local context in which health care is provided,

“risk” means any factor which, if not appropriately addressed by the Health Board or the Agency, would cause detriment to the ability of the Health Board or the Agency to comply with the duty under section 12IA.>

Miles Briggs

123 In section 4, page 5, line 23, at end insert—

<121DB Role of designated persons

- (1) Every Health Board and the Agency must—
 - (a) designate a person (a “designated person nursing and midwifery”) to carry out functions, insofar as they relate to the nursing and midwifery workforce, to enable the Board or Agency to comply with the duty in section 12IA,
 - (b) designate a person (a “designated person medical”) to carry out functions, insofar as they relate to the medical workforce, to enable the Board or Agency to comply with that duty,
 - (c) designate a person (a “designated person allied health professionals”) to carry out functions, insofar as they relate to the allied health professionals workforce, to enable the Board or Agency to comply with that duty,
 - (d) make arrangements for the purpose of informing patients and staff of staffing levels.
- (2) In complying with its duties under Parts 1 and 2 of the Health and Care (Staffing) (Scotland) Act 2019 (“2019 Act duties”), the Health Board or Agency must consult, and have due regard to the professional advice and judgement of, the persons designated under subsection (1) (“designated persons”).
- (3) At least once every three months, the designated persons must report to the Health Board or the Agency (as the case may be) on the extent to which, in the designated persons’ professional opinion, the Health Board or the Agency is complying with its 2019 Act duties.
- (4) Every Health Board and the Agency must, in seeking to comply with its 2019 Act duties, take account of reports to it under subsection (3).
- (5) Where, in the professional judgement of one or more of the designated persons—
 - (a) the Health Board or the Agency is not complying with its 2019 Act duties, any one or more designated person may provide a report to the Health Board or the Agency (as the case may be) at any time setting out why the designated person considers this to be the case,
 - (b) a decision of the Health Board or Agency is not compatible with its 2019 Act duties, the designated person may require the Health Board or the Agency (as the case may be) to record formally the designated person’s judgement on that decision.

- (6) A designated person may delegate functions conferred under subsection (1) to any person who, in the opinion of the designated person, is suitably qualified and competent.
- (7) Every Health Board and the Agency must provide the designated persons with sufficient staff and resources to carry out the designated person's functions under this section.
- (8) The Scottish Ministers must by regulations prescribe the qualifications and experience required for a person to be designated under subsection (1).>

Jeane Freeman

- 37 In section 4, page 5, line 25, leave out <As soon as reasonably practicable after the end> and insert <Before the end of the period of 1 month beginning with the last day>

Jeane Freeman

- 38 In section 4, page 5, line 27, leave out <information> and insert <a report>

Jeane Freeman

- 39 In section 4, page 5, line 31, at end insert—
 <(aa) section 12IAA,
 (ab) section 12IAB,>

Jeane Freeman

- 40 In section 4, page 5, leave out lines 34 to 36 and insert—
 <(2) Following the receipt of such reports from every Health Board and the Agency and before the beginning of the next financial year, the Scottish Ministers must—
 (a) collate the reports submitted to them under subsection (1) into a combined report for the year to which the reports relate,
 (b) lay that combined report before the Scottish Parliament, and
 (c) lay an accompanying statement setting out how they have taken into account and plan to take into account, in their policies for the staffing of the health service, the information included in the combined report.>

Monica Lennon

- 108 In section 4, page 5, line 36, at end insert—
 <() Information provided under subsection (1) must set out—
 (a) whether each Health Board or the Agency has faced any challenges or risk in carrying out its duties under—
 (i) section 12IA (including reference to the related duties under section 2 of the Health and Care (Staffing) (Scotland) Act 2019 to have regard to guiding principles in health care staffing and planning),
 (ii) section 12IB, and

- (iii) section 12ID, and
- (b) the steps the Health Board or the Agency will take to address such challenges.>

Monica Lennon

109 In section 4, page 5, line 36, at end insert—

- <(3) As soon as reasonably practicable after the end of each financial year, the Scottish Ministers must publish a report (in such manner as they consider appropriate) setting out how each Health Board and the Agency has carried out its duties under—
 - (a) section 12IA (including reference to the related duties under section 2 of the Health and Care (Staffing) (Scotland) Act 2019 to have regard to guiding principles in health care staffing and planning),
 - (b) section 12IB, and
 - (c) section 12ID.
- (4) A report under subsection (3) must set out—
 - (a) whether the Scottish Ministers have identified any challenges or risk faced by the Health Board or the Agency in carrying out its duties under—
 - (i) section 12IA (including reference to the related duties under section 2 of the Health and Care (Staffing) (Scotland) Act 2019 to have regard to guiding principles in health care staffing and planning),
 - (ii) section 12IB, and
 - (iii) section 12ID, and
 - (b) the steps that the Scottish Ministers will take as a result.
- (5) The Scottish Ministers must lay before the Parliament—
 - (a) a summary and evaluation of the information submitted to them under subsection (1), and
 - (b) a report under subsection (3).>

Jeane Freeman

41 In section 4, page 6, line 9, at end insert <and,

- (c) procedures for the identification, mitigation and escalation of risks caused by staffing levels in arrangements put in place under sections 12IAA and 12IAB.>

Jeane Freeman

42 In section 4, page 6, line 12, after <every> insert <relevant>

Jeane Freeman

43 In section 4, page 6, line 18, leave out <Health Boards and the Agency, and> and insert <the persons mentioned in paragraphs (a) to (e),>

Jeane Freeman

44 In section 4, page 6, line 18, at end insert—

<(fa) such professional regulatory bodies for employees of the persons mentioned in paragraphs (a) to (e) as they consider appropriate, and>

Jeane Freeman

45 In section 4, page 6, line 25, leave out <a person> and insert <an individual>

Jeane Freeman

46 In section 4, page 6, line 27, leave out <by a Health Board or the Agency (as the case may be)> and insert <by, as the case may be, a Health Board, the Agency or (where an integration scheme under Part 1 of the Public Bodies (Joint Working) (Scotland) Act 2014 applies) a local authority>

Jeane Freeman

47 In section 4, page 6, line 31, at end insert—

<“relevant Special Health Board” means a Special Health Board which is required, by virtue of an order made under section 2, to comply with any of the duties imposed by sections 12IA to 12IF.”>

Section 5

Jeane Freeman

48 In section 5, page 7, line 4, at end insert—

<(ia) after the entry inserted by sub-paragraph (i), insert “Section 12IAA”,
(ib) after the entry inserted by sub-paragraph (ia), insert “Section 12IAB”,>

Jeane Freeman

49 In section 5, page 7, line 5, leave out <(i)> and insert <(ib)>

Jeane Freeman

50 In section 5, page 7, line 11, at end insert—

<(ia) in the place corresponding to the entry inserted by paragraph (a)(ia), insert “Duty to have real-time staffing assessment in place”,
(ib) in the place corresponding to the entry inserted by paragraph (a)(ib), insert “Duty to have risk escalation process in place”,>

Jeane Freeman

51 In section 5, page 7, line 24, leave out <Duty> and insert <Duties>

Jeane Freeman

52 In section 5, page 7, line 31, at end insert—

- <(ia) after the entry inserted by sub-paragraph (i), insert “Section 12IAA”,
- (ib) after the entry inserted by sub-paragraph (ia), insert “Section 12IAB”,>

Jeane Freeman

- 53 In section 5, page 7, line 32, leave out <(i)> and insert <(ib)>

Jeane Freeman

- 54 In section 5, page 7, line 36, at end insert—
- <(ia) in the place corresponding to the entry inserted by paragraph (a)(ia), insert “Duty to have real-time staffing assessment in place”,
 - (ib) in the place corresponding to the entry inserted by paragraph (a)(ib), insert “Duty to have risk escalation process in place”,>

Jeane Freeman

- 55 In section 5, page 8, line 3, leave out <section 12IA> and insert <sections 12IA, 12IAA and 12IAB>

Jeane Freeman

- 56 In section 5, page 8, line 6, leave out <section 12IA> and insert <sections 12IA, 12IAA and 12IAB>

Jeane Freeman

- 57 In section 5, page 8, line 12, leave out <Duty> and insert <Duties>

Jeane Freeman

- 58 In section 5, page 8, line 19, at end insert—
- <(ia) after the entry inserted by sub-paragraph (i), insert “Section 12IAA”,
 - (ib) after the entry inserted by sub-paragraph (ia), insert “Section 12IAB”,>

Jeane Freeman

- 59 In section 5, page 8, line 20, leave out <(i)> and insert <(ib)>

Jeane Freeman

- 60 In section 5, page 8, line 26, at end insert—
- <(ia) in the place corresponding to the entry inserted by paragraph (a)(ia), insert “Duty to have real-time staffing assessment in place”,
 - (ib) in the place corresponding to the entry inserted by paragraph (a)(ib), insert “Duty to have risk escalation process in place”,>

Jeane Freeman

- 61 In section 5, page 8, line 39, leave out <Duty> and insert <Duties>

Jeane Freeman

- 62 In section 5, page 9, line 4, at end insert—
- <(ia) after the entry inserted by sub-paragraph (i), insert “Section 12IAA”,
 - (ib) after the entry inserted by sub-paragraph (ia), insert “Section 12IAB”,>

Jeane Freeman

- 63 In section 5, page 9, line 5, leave out <(i)> and insert <(ib)>

Jeane Freeman

- 64 In section 5, page 9, line 11, at end insert—
- <(ia) in the place corresponding to the entry inserted by paragraph (a)(ia), insert “Duty to have real-time staffing assessment in place”,
 - (ib) in the place corresponding to the entry inserted by paragraph (a)(ib), insert “Duty to have risk escalation process in place”,>

Jeane Freeman

- 65 In section 5, page 9, line 24, leave out <Duty> and insert <Duties>

After section 5

Jeane Freeman

- 66* After section 5, insert—

<Role of Healthcare Improvement Scotland in relation to staffing

- (1) The National Health Service (Scotland) Act 1978 is amended as follows.
- (2) After section 12IG (as inserted by section 4) insert—

5 *“HIS functions in relation to staffing*

12IH HIS: monitoring and reporting on compliance with staffing duties

HIS must monitor the discharge, by every Health Board, relevant Special Health Board and the Agency, of their duties under—

- 10 (a) section 12IA (including the related duties under section 2 of the Health and Care (Staffing) (Scotland) Act 2019 to have regard to guiding principles in health care staffing and planning),
- (b) section 12IAA,
- (c) section 12IAB,
- (d) section 12IB,
- 15 (e) section 12ID,
- (e) section 12IE, and
- (f) section 12IF.

12IJ HIS: monitoring and review of common staffing method

- 20 (1) In respect of each type of health care mentioned in section 12IC, HIS must monitor—
- (a) the effectiveness of the common staffing method described in section 12IB(2), and
 - (b) the way in which Health Boards, relevant Special Health Boards and the Agency are using the common staffing method.
- 25 (2) In exercising the duty imposed by subsection (1), HIS must from time to time as it considers appropriate carry out reviews of the matters listed in subsection (1)(a) and (b).
- (3) In carrying out such a review, HIS must—
- (a) consult—
 - 30 (i) the Scottish Ministers,
 - (ii) Social Care and Social Work Improvement Scotland,
 - (iii) every Health Board,
 - (iv) every relevant Special Health Board,
 - (v) every integration authority,
 - 35 (vi) the Agency,
 - (vii) such trade unions and professional bodies as HIS considers to be representative of employees of the persons mentioned in sub-paragraphs (iii) to (vi),
 - 40 (viii) such professional regulatory bodies for employees of the persons mentioned in sub-paragraphs (iii) to (vi) as HIS considers appropriate,
 - (ix) such other providers of health care as HIS considers to have relevant experience of using staffing level tools and professional judgement tools, and
 - 45 (x) such other persons as HIS considers appropriate, and
 - (b) have regard to the guiding principles for health and care staffing set out in section 1 of the Health and Care (Staffing) (Scotland) Act 2019.
- (4) The Scottish Ministers may direct HIS to carry out a review under subsection (2).
- 50 (5) Following a review under subsection (2), HIS may recommend changes to the common staffing method to the Scottish Ministers.
- (6) Where HIS makes such recommendations it must submit to the Scottish Ministers, and then publish, a report setting out—
- (a) a summary of the review it has carried out under subsection (2),
 - 55 (b) its recommendations for changes to the common staffing method, and
 - (c) the reasons for those recommendations.
- (7) In recommending changes to the common staffing method, HIS may take into account the development of a new or revised staffing level tool or professional judgement tool under section 12IK(2).

60

12IK HIS: monitoring and development of staffing tools

- (1) HIS must—
 - (a) monitor the effectiveness of any staffing level tool or professional judgement tool which has been prescribed by the Scottish Ministers under section 12IB(3) (including any new or revised tools which have been developed under this section), and
 - (b) where it considers that any such tool is no longer effective, recommend the revocation or replacement of the tool to the Scottish Ministers.
- (2) HIS may develop and recommend to the Scottish Ministers new or revised staffing level tools and professional judgement tools for use in relation to any kind of health care provision.
- (3) In developing such tools, HIS must collaborate with—
 - (a) the Scottish Ministers,
 - (b) Social Care and Social Work Improvement Scotland,
 - (c) every Health Board,
 - (d) every relevant Special Health Board,
 - (e) every integration authority,
 - (f) the Agency,
 - (g) such trade unions and professional bodies as HIS considers to be representative of employees of the persons mentioned in paragraphs (c) to (f),
 - (h) such professional regulatory bodies for employees of the persons mentioned in paragraphs (c) to (f) as HIS considers appropriate,
 - (i) such other providers of health care as HIS considers to have relevant experience of using staffing level tools and professional judgement tools, and
 - (j) such other persons as HIS considers appropriate.
- (4) In undertaking such collaboration, HIS and those other persons must have regard to the guiding principles for health and care staffing set out in section 1 of the Health and Care (Staffing) (Scotland) Act 2019.
- (5) The Scottish Ministers may direct HIS to develop a new or revised staffing level tool or professional judgement tool for use in relation to a particular kind of health care provision specified in the direction.

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12IL HIS: duty to consider multi-disciplinary staffing tools

- (1) When HIS is developing a new or revised staffing level tool or professional judgement tool under section 12IK, it must consider whether the tool should apply to more than one professional discipline.
- (2) HIS may at any time recommend to the Scottish Ministers that a staffing level tool or professional judgement tool which has been prescribed by the Scottish Ministers under section 12IB(3) should apply to more than one professional discipline.

12IM HIS: duty on Health Boards to assist staffing functions

Every Health Board, relevant Special Health Board and the Agency must give such assistance to HIS as it requires in the performance of its functions under sections 12IH to 12IL.

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12IN HIS: power to require information

(1) HIS may, in pursuance of its functions under sections 12IH to 12IL, serve a notice on a Health Board, relevant Special Health Board or the Agency requiring the Board or the Agency (as the case may be)—

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(a) to provide HIS with information about any matter specified in the notice, and

(b) to provide that information by a date specified in the notice.

(2) A notice under subsection (1) must explain why, and in pursuance of which function, the information is required.

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(3) A Health Board, relevant Special Health Board or the Agency (as the case may be) must comply with any such notice served on it.

12IO HIS: ministerial guidance on staffing functions

(1) The following persons must have regard to any guidance issued by the Scottish Ministers about the operation of sections 12IH to 12IN—

120

(a) HIS,

(b) every Health Board,

(c) every relevant Special Health Board, and

(d) the Agency.

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(2) Before issuing such guidance, the Scottish Ministers must consult the persons listed in paragraphs (b) to (j) of section 12IK(3) (reading the references to HIS as if they were references to the Scottish Ministers).

(3) The Scottish Ministers must publish any guidance issued under this section.

12IP Interpretation of sections 12IH to 12IO

In sections 12IH to 12IO—

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“employee” has the meaning given by section 12IG,

“integration authority” has the meaning given by section 59 of the Public Bodies (Joint Working) (Scotland) Act 2014,

“relevant Special Health Board” has the meaning given by section 12IG,

“staffing level tool” and “professional judgement tool” are to be construed in accordance with section 12IB(3).”

135

(3) In section 10C (health service functions)—

(a) after subsection (3), insert—

“(3A) HIS is to exercise the functions in relation to staffing conferred by virtue of sections 12IH to 12IL and section 12IN.”,

- 140 (b) at the end of subsection (5), insert “, and by virtue of sections 12IH to 12IL and section 12IN.”,
- (c) in subsection (6), for “and section 10D” insert “, section 10D, sections 12IH to 12IL and section 12IN.”,
- (d) in subsection (7), for “and section 10D” insert “, section 10D, sections 12IH to 12IL and section 12IN.”.
- 145 (4) In section 10I(1) (inspections of services provided under the health service)—
- (a) the word “or” at the end of paragraph (a) is repealed,
- (b) at the end of paragraph (b), insert “, or
- (c) in pursuance of its functions under sections 12IH to 12IL and section 12IN.”.>

Miles Briggs

66A As an amendment to amendment 66, line 92, at end insert—

- <() The Scottish Ministers may by regulations require that assumptions on certain matters (for example, as to staff absence and bed occupancy levels) must be made by HIS in the process of making a recommendation to them under subsection (2).>

Before section 6

David Stewart

110 Before section 6, insert—

<Duty on commissioners of care services to ensure appropriate resources

- (1) 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 ensure that appropriate resources are provided to that person as is necessary for the provision of suitably qualified and competent individuals in care services, as is appropriate for—
- (a) the health, wellbeing and safety of service users, and
- (b) the provision of high quality care.
- (2) In determining what constitutes appropriate resources 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.>

Section 6

Alex Cole-Hamilton

- 7 In section 6, page 9, line 32, after <users> insert <and staff>

Alex Cole-Hamilton

- 111 In section 6, page 9, line 33, after <of> insert <safe and>

Alex Cole-Hamilton

- 112 In section 6, page 9, line 33, after <care> insert <and services>

Jeane Freeman

- 67 In section 6, page 9, line 33, insert <and,
(c) in so far as it affects either of those matters, the wellbeing of staff.>

After section 6

David Stewart

- 113 After section 6, insert—
- <Risk management procedure**
- (1) Every person who provides a care service must establish a risk management procedure.
 - (2) The purpose of the risk management procedure is to—
 - (a) identify,
 - (b) monitor,
 - (c) assess, and
 - (d) set out a process for the escalation of,risk associated with complying with the duty in section 6.
 - (3) A risk management procedure established under subsection (1) must be developed, and from time to time the operation of the procedure must be reviewed, by the person mentioned in subsection (1).
 - (4) In carrying out a review under subsection (3), the person must have regard to the views of individuals working in the care service provided by that person.>

Section 7

David Stewart

- 114 In section 7, page 10, line 8, at end insert—
- <() The Scottish Ministers must ensure that adequate resources are allocated to a person who provides a care service to comply with the duties under this section.>

Section 8

Jeane Freeman

68 In section 8, page 10, line 14, at end insert—

<() Such guidance may, in particular, include provision about the related duty under section 3(1) to have regard to the guiding principles for health and care staffing.>

Jeane Freeman

69 In section 8, page 10, line 16, at end insert—

<() the Scottish Social Services Council,>

Jeane Freeman

70 In section 8, page 10, line 17, after <providers> insert <, commissioners>

Jeane Freeman

71 In section 8, page 10, line 20, at end insert—

<() such persons as they consider to be representative of carers (within the meaning of section 1 of the Carers (Scotland) Act 2016), and>

Section 10

Miles Briggs

115 In section 10, page 11, line 5, leave out <may> and insert <must>

Miles Briggs

116 In section 10, page 11, line 5, after <Ministers> insert <evidence-based establishment-setting>

Miles Briggs

117 In section 10, page 11, line 9, at end insert—

<() For the purpose of assisting it to develop such methods, SCSWIS must develop indicators of clinical quality in relation to the services mentioned in subsection (1).>

Miles Briggs

118 In section 10, page 11, line 10, after <methods> insert <and indicators>

Jeane Freeman

72 In section 10, page 11, line 12, at end insert—

<() the Scottish Social Services Council,>

Jeane Freeman

- 73 In section 10, page 11, line 12, at end insert—
<() every Health Board,>

Jeane Freeman

- 74 In section 10, page 11, line 25, at end insert —
<() The Scottish Ministers must publish any guidance issued under subsection (3)(a).>

Miles Briggs

- 119 In section 10, page 11, line 34, leave out <may> and insert <must>

Jeane Freeman

- 75 In section 10, page 12, line 1, after <service> insert <, and by individuals who have a personal interest in their care (for example family members and carers within the meaning of section 1 of the Carers (Scotland) Act 2016),>

Miles Briggs

- 120 In section 10, page 12, line 7, at end insert <and
() any guidelines published by professional and improvement organisations that are applicable to care services.>

David Stewart

- 121 In section 10, page 12, line 7, at end insert—
<() The Scottish Ministers must ensure that adequate resources are allocated to SCSWIS, and (as the case may be) the persons mentioned in subsection (2) to enable them to develop such methods.>

Jeane Freeman

- 76 In section 10, page 12, line 9, after <SCSWIS> insert <under section 82A or 82BA>

Jeane Freeman

- 77 In section 10, page 12, line 15, at end insert—
<() the minimum frequency at which a staffing method is to be used, and>

Jeane Freeman

- 78 In section 10, page 12, line 16, leave out from <and> to the end of line 18

Miles Briggs

- 122 In section 10, page 12, line 18, at end insert—

- <(3) Regulations under subsection (1) requiring the use of a staffing method in a care home service where nursing care is provided must in particular require that—
 - (a) when using the method, a person who provides a care home service must have due regard to the views of a registered nurse of appropriate seniority,
 - (b) before giving views for the purpose of paragraph (a), a registered nurse of appropriate seniority must seek and have due regard to the views of all registered nurses providing that service.
- (4) The Scottish Ministers may by regulations—
 - (a) prescribe the meaning of “registered nurse of appropriate seniority” for the purposes of subsection (3), having regard to the experience and training required to assess what is required to ensure appropriate staffing,
 - (b) require that, where a registered nurse of appropriate seniority is not employed in a care home service, the person who provides that care home service must secure the services of such a registered nurse for the purposes of subsection (3).>

Jeane Freeman

79 In section 10, page 12, line 18, at end insert—

<82BA Review and redevelopment of staffing methods

- (1) SCSWIS may—
 - 5 (a) carry out reviews, from time to time as it considers appropriate, of the effectiveness of any staffing method which has been prescribed by the Scottish Ministers under section 82B (including any revised methods which have been developed under this section), and
 - (b) where it considers that any such method is no longer effective, recommend the revocation or replacement of the method to the Scottish Ministers.
- 10 (2) SCSWIS may develop and recommend to the Scottish Ministers revised staffing methods for use by persons who provide care services.
- (3) Subsections (2), (3), (4) and (5) of section 82A apply to the redevelopment of staffing methods under this section as they apply to their development under that section.
- 15 (4) The Scottish Ministers may direct SCSWIS to develop a revised staffing method for use in relation to a particular kind of care service specified in the direction.

82BB Duty to consider multi-disciplinary staffing tools

- 20 (1) When SCSWIS is developing a staffing level tool as part of a staffing method under section 82A or a revised staffing method under section 82BA, it must consider whether the tool should apply to more than one professional discipline.
- (2) SCSWIS may at any time recommend to the Scottish Ministers that a staffing level tool which has been prescribed as part of a staffing method by the Scottish Ministers under section 82B should apply to more than one professional discipline.>

Monica Lennon

79A As an amendment to amendment 79, line 16, at end insert—

<82BAA Review of duty on care service providers to ensure appropriate staffing

- (1) SCSWIS may carry out reviews, from time to time as it considers appropriate, of the effectiveness of the operation of the duty under section 6 of the Health and Care (Staffing) (Scotland) Act 2019.
- (2) Having carried out a review under subsection (1), SCSWIS may publish a report to the Scottish Ministers on the operation of that duty.
- (3) A report under subsection (2) may be published in such manner as SCSWIS considers appropriate.>

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