



## **Health and Care (Staffing) (Scotland) Act 2019**

### **Health and Social Care Partnerships (HSCP) Chapter Testing Report April 24**

#### **1. HSCP Testing programme overview:**

We approached HSCP commissioning teams across Scotland to take part in answering two test questions around their duties under section 3(2) of the Health and Care Staffing Act (Scotland) 2019.

Participants were issued with a link to test questions on the ImproveWell site and could enter their answers there. We collected these answers anonymously to encourage participation. Participants were able to access the ImproveWell site repeatedly if they wanted to log further information.

The two test questions were taken from the draft statutory guidance. They were:

1. Please detail the steps you have taken as an organisation to comply with section 3(2) of the Health and Care (Staffing) (Scotland) Act 2019

2. Please detail any ongoing risks that may affect your ability to comply with the duty set out in section 3(2).

Ten HSCP commissioning teams participated in this part of the testing programme. A summary of the participants' responses can be found in part 2.

A further eight HSCTPs provided information during contact meetings with link inspectors. A summary of their responses can be found in part 3. One HSCP provided answers for both testing pathways.

One participant and one additional HSCP also provided information in addition to the two testing pathways. This information is provided in part 4.

#### **2. Testing via ImproveWell – summary of findings:**

**Summary of question 1:** Please detail the steps you have taken as an organisation to comply with section 3(2) of the Health and Care (Staffing) (Scotland) Act 2019.

Survey responses indicate that Health and Social Care Partnerships (HSCPs) were proactively working to comply with the Health and Care (Staffing) (Scotland) Act 2019 (HCSSA) and were implementing various measures to ensure appropriate staffing and service delivery in line with the Act's requirements.

There were several main themes emerging from the responses. These are as follows:



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#### 1) Oversight and Monitoring of Commissioned Services:

- a. HSCLs utilised multiple sources to monitor commissioned services, including quality improvement teams, care huddle meetings, clinical care meetings, social work reviews, and incident notifications.
- b. There were established contract monitoring processes and multi-agency meetings that could ensure compliance with HCSSA.
- c. Some HSCLs identified actions to address gaps in the collection of information, particularly regarding staff views, wellbeing, transparency in staffing decisions, and the allocation of staff for training.

#### 2) Compliance with HCSSA Requirements:

- a. HSCLs detailed various steps taken to ensure compliance with section 3(2) of the HCSSA, such as ensuring staff registrations, PVG checks, adherence to Fair Work practices, and robust contract monitoring.
- b. Contractual terms and conditions were reviewed, to ensure obligations related to staffing, and the duty to comply with the guiding principles of the Act were integrated into service reviews and contracts.

#### 3) Staffing and Training Duties:

- a. HSCLs have taken steps to ensure appropriate staffing using quality assurance and contract monitoring templates, which include staffing information and training details.
- b. The duty to adhere to guidance issued by Scottish Ministers and to use prescribed staffing methods or tools was addressed.

#### 4) Engagement and Communication:

- a. Quality Assurance Teams were engaging with providers to discuss the new legislation and its implications.
- b. Provider forums and assurance teams facilitated open communication and support for the implementation of the HCSSA.

#### 5) Preparation and Education:

- a. Some HSCLs formed focussed working groups, to ensure compliance and readiness for the Act's implementation.
- b. Educational webinars and information sessions have been held to inform and prepare staff.

#### 6) Contractual and Funding Considerations:

- a. Due diligence checks were to be conducted prior to contracting services, with tenders including questions on staffing and service delivery.



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- b. Contracts were developed with a focus on outcomes and include clauses for monitoring staffing performance.
- 7) **Collaborative and Supportive Approach:**
  - a. Good relationships with providers and the Care Inspectorate were emphasised to ensure a supportive approach to service delivery and compliance.
  - b. The development of a 'Commissioning Academy' and engagement at national levels aimed to support providers with emerging issues.
- 8) **Continual Improvement and Updates:**
  - a. Working groups were established to stay updated on the legislation and share knowledge within teams.
  - b. Contract monitoring frameworks and templates were reviewed and may be updated to align with the new legislation and to better reflect safer staffing frameworks.
- 9) **Provider Readiness and Risk Mitigation:**
  - a. Discussions and surveys were carried out to gauge provider readiness for the Act and to identify potential risks.
  - b. Where applicable, the local authority's role as a service provider is also being examined to ensure compliance with safer staffing legislation.

Overall, the HSCPs demonstrated a proactive approach to meeting the responsibilities set by the HCSSA, with a focus on effective staffing, compliance with regulations, staff wellbeing, and continuous improvement in service delivery.

**Summary of question 2:** Please detail any ongoing risks that may affect your ability to comply with the duty set out in section 3(2).

There were several themes emerging from the responses. These are as follows:

- 1) **Reporting and Regulatory Concerns:** Several participants had significant concern about the increased reporting burden on Health and Social Care Partnerships (HSCP) and providers. The redundancy of data reporting, with information already provided to the Care Inspectorate, were highlighted, as well as a lack of clarity on how the Scottish Government will use the collected data to improve services.
- 2) **Financial Pressures:** Some participants were worried about the financial context and cost pressures. These may lead to tough decisions regarding



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service provision and could hinder the continuous improvement of services and outcomes for users.

- 3) **Workforce Challenges:** Some participants pointed out the ongoing challenges with staff recruitment and retention, leading to a potential over-reliance on agency staffing. They found this could negatively impact continuity of care and staff wellbeing. Additionally, there were concerns about the lack of attractiveness and financial incentives for social care staff, which exacerbates workforce instability.
- 4) **Legislative Clarity and Expectations:** A perceived vagueness of the legislation and a lack of detail on reporting requirements created uncertainty for HSCP commissioners and care providers. Some participants saw a need for clearer guidance on what is expected regarding staffing arrangements and compliance with the Act.
- 5) **Resource Limitations:** Some participants pointed out the general theme of limited funding. This affects front-line care delivery, and no additional resources for development despite increasing regulation and the need for more specialised training for staff.
- 6) **Monitoring and Compliance:** Some participants predicted that ensuring compliance with all areas of the Act would be challenging. However, there was a clear commitment to robust monitoring to mitigate risk.
- 7) **Uncertainty and Risk Management:** Concerns were raised about the potential fiscal impact on providers if new staffing tools identified the need for additional staff. The current workforce crisis makes filling vacancies difficult, and there was anxiety about meeting annual reporting deadlines during already demanding times of the year.
- 8) **Implementation and Engagement:** Efforts were being made to review and update risk registers related to the implementation of the Act. There was ongoing engagement with local groups and forums to ensure the risk register reflects current information and challenges.

In summary, the responses indicated a need for clear guidance, adequate resources, and support to manage new legislative requirements and reporting obligations. There were also concerns about financial sustainability, workforce challenges, and the potential impact on service delivery and outcomes for service users.

**3. Information provided** during contact meetings with link inspectors. An identical set of questions was used for each meeting to enable a structured conversation about the HCSSA. Below is a summary of the answers provided for each question.



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**Question:** Did the organisation report that they are preparing for enactment of the Health and Care (Staffing) (Scotland) Act 2019?

**Answers:** All HSCPs answered: Yes

**Question:** Please provide an outline of the steps the organisation has taken to comply with part one, section 3(2) of the Health and Care (Staffing) (Scotland) Act 2019, (a) the guiding principles.

**Answers included:**

- Working closely with the Care Inspectorate (CI) Safe Staffing Programme team.
- Timetable for preparation in place.
- Creating an implementation group made up of lead people and registered managers to conduct a self-analysis of the Act and cross refer the processes in place relating to the guiding principles. The group measured progress against risk registers to identify gaps.
- Speaking to providers of the need for them to be aware of the legislation.
- Managers who have contact with providers for residential care are working with providers.
- Development of resources for staff.
- Creating improvement plans.
- A range of activities to raise standards in relation to the guiding principles in a full range of settings.
- Working with commissioned services to ensure awareness.
- Ensuring supervision and team meetings are used to focus staff.
- Considering of governance arrangements.

**Question:** Please provide an outline of the steps the organisation report they have taken to comply with part one, section 3(2) of the Health and Care (Staffing) (Scotland) Act 2019 (b) the duties relating to staffing which relate to persons who provide care services.

**Answers included:**

- Creation of an implementation group to carry out an analysis of actions required.



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- Appointment of a temporary service manager to review the commissioning model for adult services.
- Other answers were identical to those previously provided for this question.

**Question:** At this time, does the organisation report any ongoing risks that may affect their ability to comply with the duty set out in part one, sections 3(2) and outlined in section 3(6).

#### Answers included:

- Two HSCPs highlighted the possible impact of the ongoing staffing crisis on providers and their own services.
- Two HSCPs pointed out ongoing staffing challenges for remote and rural areas.
- Other HSCPs saw either no significant risk or felt that they were either already well prepared or on track with their preparations for the implementation of the HCSSA.

In summary, the structured conversations with link inspectors demonstrate that HSCPs took a proactive approach to prepare for the implementation of the HCSSA and were aware of their duties. A collaborative approach was taken to support and inform providers. Highlighted risks were similar to those captured in the ImproveWell pathway and focussed on potentially rising costs and the impact of the current recruitment crisis, particularly in rural areas.

#### 4. Information provided by HSCPs out with the two testing pathways:

Two participating HSCPs provided information about the two test questions in the ImproveWell pathway.

#### Answers for preparedness included:

- Carried out a survey of local providers and found that the clear majority either considered themselves prepared or somewhat prepared.
- Found that many local services had attended webinars and reviewed their staffing practices.
- The use of existing procurement procedures with selection criteria from the Scottish Government Single Procurement Document, could be used to gain provider declarations of having correct standards and arrangements in place.



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- Sets of existing questions can be used for tender opportunities. This includes questions about Fair Work First. Providers and suppliers can use these to demonstrate their adherence to fair work principles and their provision of safe and effective staffing.
- Contracted requirements will specify providers' obligations to ensure compliance with correct health and care staffing.
- Regular contract monitoring of commissioned services will continually seek evidence-based assurance from providers partners that appropriate staffing is in place.
- Support from the HSCP and Scottish Care will be provided for care services.
- Care Inspectorate inspection outcomes will be used to monitor compliance.
- Individual social work assessments will be used to identify and evaluate the required staffing levels for care at home packages.
- A contract review for third and independent sector services without delivery of personal care will be carried out to ensure contracts reflect up to date procurement rules and legislation.
- Facilitated provider meetings to raise awareness and to encourage action
- Started regular groups for care service managers with aim to continue them beyond the enactment date.
- Cooperated with Scottish Care to ensure care service concerns were heard and addressed.

#### Answers for perceived risks included:

- Surveys showed that some providers felt unsure about how to evidence compliance after 1 April.
- Surveys showed that some providers had concerns about potentially increasing costs for staffing and training.
- Commissioning teams saw risks of potentially increasing staffing costs and viability of some services.
- Recruitment and retention problems and high sickness absence level that were currently experienced by commissioned services in the health and social care sector could present challenges.

#### One HSCP did not take part in testing but provided information about preparations:

- Informed services at provider meetings.





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- Carried out a survey to gain information about the preparedness of services. The survey indicated that a clear majority of respondents felt aware and somewhat prepared.

#### 5. Overall summary of preparedness and perceived risks:

The testing project gained an overview of the preparations undertaken by more than half of the HSCP commissioning teams for adult care services in Scotland. Through the HSCP interactions with their local care services, this project also provided some insight into the preparedness of care services.

The information gained via this survey showed that all participating HSCTPs worked proactively on preparing their commissioning teams, 'in house' care services and local providers for the implementation of the Health and Care (Staffing) (Scotland) Act 2019.

HSCP commissioning teams were aware of their duties under the HCSSA.

HSCPs had action plans and reviewed their processes to ensure that they are aligned to the HCSSA.

Risks perceived by HSCPs centred around potential cost implications because of a changed approach to staffing. Most HSCPs saw a current backdrop of challenging limitations to public funding and a recruitment crisis for staff in social care as a difficult environment for the implementation of the HCSSA.

Some HSCPs requested further guidance, specifically for their reporting duties; please email the Scottish Governments Health Care Staffing Act (HCSA) implementation team at [HCSA@gov.scot](mailto:HCSA@gov.scot)