

NHS Ayrshire & Arran

Meeting:	Ayrshire and Arran NHS Board
Meeting date:	Monday 12 August 2024
Title:	Health and Care Staffing (Scotland) Act (2019) Formal reporting – Quarter 1 (April – June 2024)
Responsible Director:	Jennifer Wilson, Nurse Director Dr Crawford McGuffie, Medical Director Lynne McNiven, Director of Public Health
Report Author:	Alistair Reid, Director of Allied Health Professions Dr Claire Gilroy, Clinical Lead for Service Development and Improvement

1. Purpose

This is presented to the Board for:

- Discussion

This paper relates to:

- Government policy/directive
- Legal requirement

This aligns to the following NHS Scotland quality ambition(s):

- Safe
- Effective
- Person Centred

2. Report summary

2.1 Situation

This paper is presented to the NHS Board for assurance. The report provides a summary of NHS Ayrshire & Arran's progress against the duties of the Health and Care (Staffing) (Scotland) legislation in line with requirements for local reporting, as well as the identified risks and mitigations.

2.2 Background

The Health and Care (Staffing) (Scotland) Act came into effect on 1st April 2024. The Act is applicable to all clinical professional groups, and seeks to facilitate high quality care and improved outcomes for people using services in both health and care by helping to ensure appropriate staffing.

The Act places specific duties on Health Boards, care service providers, Healthcare Improvement Scotland (HIS), the Care Inspectorate and Scottish Ministers.

Effective application of the Health and Care (Staffing) (Scotland) legislation aims to:

- Improve standards and outcomes for service users,
- Take account of the particular needs, abilities, characteristics and circumstances of different service users,
- Respect the dignity and rights of service users,
- Take account of the views of staff and service users,
- Ensure the wellbeing of staff,
- Promote openness and transparency with staff and service users about decisions on staffing,
- Ensure efficient and effective allocation of staff and
- Promote multi-disciplinary services as appropriate

Now that the Act has been enacted, there are several reporting expectations that Health Boards must comply with, namely:

- High Cost Agency Use – Boards must submit quarterly reports to Scottish Government; to report on the number of occasions that they have required to use agency workers who cost 150% or more than the cost of a substantive equivalent, the % cost of such, and the reasons for this use.
- The Executive Nurse Director, Medical Director, and Director of Public Health require to report to Board on a quarterly basis to outline the level of compliance against the legislation for the range of professional groups that they have executive responsibility for, and the steps being taken to improve such compliance. This paper provides the first such report.
- Health Boards will submit annual reports to Scottish Ministers, at the end of each financial year to detail compliance with the Act, high cost agency use and any severe and recurrent risks. The first such report will be due in April 2025.

Scottish Ministers will then report on legislative compliance and offer recommendations to Parliament. The detail of these reports will help inform local and national workforce planning, along with health and social care policies.

In addition to the required regular reporting, attainment against the health duties will be monitored by Healthcare Improvement Scotland. Recent inspections of neighbouring Boards have demonstrated an increased scrutiny on workforce planning and the requirements of the legislation.

2.3 Assessment

2.3.1 Programme Board

The NHS Ayrshire & Arran Health Care Staffing Programme Board has been in existence for over a year, and meets regularly. With representation from the range of professional groups included under the scope of the legislation, the Programme Board seeks to facilitate attainment with the health duties, and to support NHS Ayrshire & Arran to discharge its duties under the Act.

2.3.2 Local reporting

Through the NHS Ayrshire & Arran Health Care Staffing Programme Board, a local schedule for reporting has been agreed.

Assurance reports will be provided to the NHS Ayrshire & Arran Health Care Staffing Programme Board, to encompass all professional groups included under the scope of

the health components of the legislation. These reports will cover all relevant health duties within the Act, and provide assurance around the approach being taken to support compliance with the Act.

Reports have been scheduled to be tabled across the course of the year. The detail of the schedule can be seen within **Appendix 1**. The content of the Assurance reports brought to the NHS Ayrshire & Arran Health Care Staffing Programme Board will build the detail required for internal quarterly Board reports required from the Medical Director, Executive Nurse Director, and Director of Public Health which should encompass all professional groups included under the scope of the legislation.

It has further been agreed that services delivered within the Health and Social Care Partnerships (HSCP) will be scheduled to report in the same meeting, thereby building assurance for each HSCP, in addition to supporting a cumulative board-wide position. This approach is intended to be complementary to the multi-disciplinary progress already being made within HSCPs, recognising the integrated way in which services are delivered, and the additional duties/focus required under the care elements of the legislation.

This paper provides summary of current position against the legislative duties, and signal of approach agreed to build the detail required for future reports. Through the described schedule of reporting, a greater level of detail will be provided through such future reports.

2.3.3 Summary of overall position

In the lead up to enactment, all Health Boards were required to submit, through a detailed template, an update against each of the legislative duties. The template provided summary of status against each duty and opportunity to highlight successes, risks or challenges.

Due to mid-year changes in requirements from Scottish Government, the last report submitted by NHS Ayrshire & Arran was the Quarter 3 report which was submitted in April 2024 and covered the period up until 31 March 2024. In recognising the varied position across professional groups, and considering the consequent cumulative position, a position of 'reasonable assurance' was declared at that time – advising that while there is a generally sound system of governance, risk management and control in place, some issues, non-compliance or scope for improvement were identified which may put at risk the achievement of objectives in the area audited. The template and position were approved virtually by CMT prior to submission in April 2024.

2.3.4 Current position against the required duties

The majority of legislative duties, as follows, are applicable to all clinical professions. A brief summary of position against each is provided through the following sections. A summary of level of assurance reported against each duty is included in **Appendix 2**.

- **12IA - Duty to ensure appropriate staffing**

This overarching duty seeks assurance that steps are being taken to have the right workforce in the right place to support safe, quality care. There are a variety of approaches being undertaken to support attainment against this duty. Workforce planning takes place at uni-professional, multi-disciplinary and service level. Workforce plans are developed by NHS Ayrshire & Arran, and the individual Health and Social Care Partnerships.

Each professional group will provide update on the current position and approach to workforce planning, and attainment against the detailed requirements of this duty through the schedule of reports to be brought through Programme Board.

- **12IB - Duty to ensure appropriate staffing: agency workers**

The NHS Ayrshire & Arran position against this duty is varied. Local discussions have progressed to support Board return to Scottish Government through the required template, in line with national schedule.

Local progress has identified that agency use in Ayrshire is currently limited to Medicine, Nursing, AHPs, and Healthcare Science (Laboratories and Audiology).

Nursing progress around shift to use of framework agency has resulted in low volume of non-framework agency use. Nursing framework agency cost has been locally calculated as falling beneath the threshold for high cost agency reporting. Consequently, while there is still an element of high cost Nursing agency use in Ayrshire, this has significantly reduced in recent months. There is a robust local process to facilitate nursing return against this duty.

For AHPs and Healthcare science, use of agency is low volume and will therefore also be included in the upcoming return. Local process is being developed to strengthen the governance arrangements around use of agency, and to support efficient future reporting.

Local discussions have highlighted challenge with reporting for Medicine, in terms of volume, lack of administrative support, and concerns regarding governance processes for data sharing for medical posts, particularly where such information could lead to identification of individual salaries. These concerns have been escalated to the national team. Until governance and assurance processes have been confirmed, High Cost Agency Use report will not include medical staff at this point in time.

- **12IC - Duty to have real-time staffing assessment in place**

The NHS Ayrshire & Arran position against this duty is varied.

It is understood that the application of e-rostering will support compliance with the legislative requirement of this duty. Teams and services that have commenced use of e-rostering will therefore already be compliant.

Acute nursing colleagues are in the process of rollout of e-rostering, and are utilising local databases in the meantime.

Due to the pace of roll out, interim measures will be required in a significant number of service areas. A generic real time staffing resource has been developed by Healthcare Improvement Scotland, and NHS Education Scotland as an interim support. This is being adopted by AHP services across NHS Ayrshire & Arran in a staged manner.

For medical staff, safe staffing numbers are set via medical staffing rotas and these numbers vary by day of week and time of day. The Allocate Programme in its current form is not a suitable tool for medical staff rotas and the national team are working on this, but it is unlikely to be implemented for medical staff within this financial year. Agreement has been reached locally that until the Allocate e-rostering system is in place, teams with rota administrators will log actions taken when someone is off on

short/long-term sickness absence and who this was escalated to if safe staffing wasn't able to be achieved. This information will be submitted to the Medical Strategic Workforce Group quarterly for review.

Engagement with site based safety huddles, and other local approaches also act as evidence towards compliance with this duty.

- **12ID - Duty to have risk escalation process in place**

There are a number of structures and processes in place to support compliance with this duty in ensuring that any real time risks are escalated appropriately. Local processes are being formalised to support attainment of this duty. As the local system for recording of any adverse incidents, Datix remains the system that would currently be used to record and escalate staffing risks.

As an example, for medical staff, short-term workforce concerns are escalated via to the duty consultant to the appropriate triumvirate and then to deputy Medical Director.

Engagement with site based safety huddles, and other local approaches also act as evidence towards compliance with this duty.

- **12IE - Duty to have arrangements to address severe and recurrent risks**

The various governance structures and assurance processes in place across the organisation support compliance with this duty.

A new medical workforce planning governance structure has been implemented which meets the requirements for this duty.

Various professional assurances groups are in place across the professional groups included under the scope of the legislation.

The organisation's governance architecture ensures that risks are recorded, reported, escalated and reviewed appropriately.

- **12IF - Duty to seek clinical advice on staffing**

Professional leadership structures in place across NHS Ayrshire & Arran support compliance with this duty.

Psychology have developed a safe staffing ledger to record advice provided.

AHP services are in the process of mapping out existing leadership structures to ensure they align to this expectation.

Medical staffing does this via medical line management structure. Currently only teams with administrative support are able to record this.

There will be value in further attention in developing process to ensure that those who give advice receive feedback on subsequent decision making, and there is clarity around when and where to record any disagreement with the clinical advice that has been given.

- **12IH - Duty to ensure adequate time given to clinical leaders**

The NHS Ayrshire & Arran position against this duty is varied.

All medical staff with leadership roles have standardised time allocated in their job plan to undertake the role. The Allocate job planning project is underway to ensure all Team Service plans are complete and signed off. This is a 12 month project with project management support.

In psychology, job plans are formally based around National benchmarks, with time to lead being formally considered in all leads job plans where colleagues are managers of services and staff.

Job planning is also currently being progressed within AHP services.

- **12II - Duty to ensure appropriate staffing: training of staff**

There are a number of structures and processes in place to support compliance with this duty including use of TURAS for personal development reviews, staff development through service level agreements, bursaries and endowments funds.

All medical staff have a minimum of one session (4 hours) per week in their job plan for appraisal and revalidation purposes. This includes time for CPD.

Current progress through the organisation's protected learning time group will also help with this duty

- **12IM - Reporting on staffing**

As described earlier in this paper, NHS Ayrshire & Arran are clear in terms of reporting requirements and have developed a schedule of reporting to the NHS Ayrshire & Arran Health and Care Staffing Programme Board.

2.3.5 Additional duties applicable where nationally mandated Staffing tools exist:

There are additional duties associated with application of the common staffing method. These duties apply only in areas where speciality specific workload tools are named within the legislation. At present, this includes nursing, midwifery, and (in the Emergency Department only) medicine:

- **12IG - Duty to ensure appropriate staffing: number of registered healthcare professionals etc.**
- **12IJ - Duty to follow common staffing method**
- **12IK - Common staffing method: types of health care**
- **12IL - Training and consultation of staff**

NHS Ayrshire & Arran has an agreed schedule to ensure compliance with these duties. This includes timetable to support the application of the suite of nationally mandated workload staffing tools. Support in the application of the common staffing method is provided by NHS Ayrshire & Arran's workforce Staffing Lead and Data Analyst. Training on the use of the common staffing method is provided in advance of, and during any such tool application.

2.3.6 Quality/patient care

The overarching ambition of the Health and Care (Staffing) (Scotland) legislation is to ensure the delivery of safe, quality care and improve outcomes and experience for the people who access our services, and those working within our system.

2.3.7 Workforce

Compliance with the duties laid out under the Health and Care (Staffing) (Scotland) legislation will enable NHS Ayrshire & Arran to determine the extent to which the current workforce configuration aligns to the delivery of safe, quality care, and to identify any associated severe or recurring workforce risks.

There is recognition under the legislation of the relationship between adequate staffing levels and staff wellbeing, with a requirement to ensure that staffing levels do not compromise staff wellbeing.

Additionally, compliance with the legislation requires an increased emphasis on openness and transparency; ensuring it is easy for staff to raise concerns around staffing levels or quality of care, and clear process to ensure that any colleague who raises such risk is informed as to any action or decision taken as a result.

2.3.8 Financial

NHS Ayrshire and Arran receives non-recurring funding from the Scottish Government to resource a Lead role to support readiness for implementation of the Health and Care (Scotland) (Staffing) legislation. Historically this role was focussed around the Nursing and Midwifery professions. Recently, this role has widened to encompass support to the range of professions included under the legislation. 2024/25 is expected to be the last year in which national funding for this role will be provided.

There is no additional resource provided to support implementation of this legislation. The activity required to demonstrate attainment against the legislative duties, and subsequent reporting will be beneficial in supporting NHS Ayrshire and Arran to determine best use of the resource it already has available.

2.3.9 Risk assessment/management

Local risks and mitigations

- There is understandable variance across the professional groups in terms of position of compliance. This has been partially mitigated through local awareness raising sessions, promotion of the national communications and learning resources, and continued leadership and influence through the local Health and Care Staffing Bill Programme Board.
- There is acknowledgement of a limited ability to robustly approach and quantify the determination of 'safe staffing' beyond where specialty specific tools already exist. This will continue to be mitigated through use of existing workload measurement and workforce planning methodologies.
- There is a potential tension between the way in which the legislative duties are detailed separately under health, and care, versus integrated operational delivery. The planned integrated approach to the local Health and Care Staffing Bill Programme Board will aim to further mitigate this risk.
- There is concern that the activity required to demonstrate compliance with the legislation may identify safety concerns or highlight gaps in workforce that may be challenging to address. The delivery of safe, quality care is already the remit of the health board and integration authorities, and as such processes are already in place to identify and mitigate such risk. The annual report to be

collated by ministers will provide opportunity to make policy recommendations around any recurring risks.

2.3.10 Equality and diversity, including health inequalities

The legislation seeks to ensure high quality care and the best outcomes for our citizens. Any programmes of work as a result of this legislation that could potentially impact on our compliance with the Public Sector Equality Duty, Fairer Scotland Duty, and the Board's Equalities Outcomes, will require an Impact Assessment to be undertaken.

2.3.11 Other impacts

The activity associated with this work also aligns with

- Best value
 - Vision and Leadership
 - Governance and accountability
 - Use of resources

- Compliance with Corporate Objectives and has close links with the Excellence in Care activity in assuring the delivery of safe, quality care.

2.3.12 Communication, involvement, engagement and consultation

The Board has carried out its duties to involve and engage external stakeholders where appropriate.

Local participatory awareness raising sessions took place during September and October 2023 to support involvement and engagement around the local implications of this legislation. The relevant suite of online modules have been widely promoted through the organisation in supporting awareness and understanding of the legislation and its intended impact.

2.3.13 Route to the meeting

This has been previously considered by the following groups as part of its development. The groups have either supported the content, or their feedback has informed the development of the content presented in this report.

- Corporate Management Team, 8 July 2024 (shared virtually)
- Staff Governance Committee, 1 August 2024

2.4 Recommendation

This paper is brought to NHS Board for:

- **Discussion** – Examine and consider the implications of a matter.

Members are asked to:

- Note the current position as described in this update, including local progress being made as well as the identified risks and mitigations.
- Consider the Board position in relation to compliance with the Health and Care (Staffing) (Scotland) Act and confirm that the report provides suitable assurance or request further assurance if necessary.

3. List of appendices





The following appendices are included with this report:

- Appendix No 1, Health and Care Staffing Bill Programme Board, Revised Schedule of Meetings 2024/25.
- Appendix No 2, NHS Ayrshire & Arran Reported level of assurance with each duty.

Health & Care Staffing Bill Programme Board Revised Schedule of Meetings 2024/25

Date	Time	Reports Due	Deadline for submission
Wednesday, 14 th August 2024	11.30 am - 1230 pm	North <ul style="list-style-type: none"> • AHP • Nursing • Psychology 	7 th August 2024
Wednesday, 9 th October 2024	2.30 pm -3.30 pm	South <ul style="list-style-type: none"> • AHP • Nursing 	2 nd October 2024
Tuesday, 19 th November 2024	9.30 am – 10.30	East <ul style="list-style-type: none"> • AHP • Nursing • Primary care <ul style="list-style-type: none"> ○ Dentistry ○ Optometry 	12 th November 2024
Wednesday, 11 th December 2024	11.00 am – 12 noon	Acute <ul style="list-style-type: none"> • Midwifery • Nursing • AHP • Medicine 	4 th December 2024
Wednesday, 22 nd January 2025	9.30 am – 10.30	Org wide <ul style="list-style-type: none"> • Public health • Spiritual care • Pharmacy 	15 th January 2025
Wednesday, 19 th February 2025	9.30 – 10.30	Org wide <ul style="list-style-type: none"> • Healthcare science <ul style="list-style-type: none"> ○ Audiology ○ Decontamination services ○ Laboratories 	12 th February 2025

NHS Ayrshire & Arran Reported level of assurance with each duty

Level of assurance		System adequacy	Controls
Substantial assurance		A sound system of governance, risk management and control exists, with internal controls operating effectively and being consistently applied to support the achievement of objectives in the area audited.	Controls are applied continuously or with only minor lapses.
Reasonable assurance		There is a generally sound system of governance, risk management and control in place. Some issues, non-compliance or scope for improvement were identified which may put at risk the achievement of objectives in the area audited.	Controls are applied frequently but with evidence of non-compliance.
Limited assurance		Significant gaps, weaknesses or non-compliance were identified. Improvement is required to the system of governance, risk management and control to effectively manage risks to the achievement of objectives in the area audited.	Controls are applied but with some significant lapses.
No assurance		Immediate action is required to address fundamental gaps, weaknesses or non-compliance identified. The system of governance, risk management and control is inadequate to effectively manage risks to the achievement of objectives in the area audited.	Significant breakdown in the application of controls.

Duty	NHS Ayrshire & Arran RAG Status as reported in 2023/24 Q3 report to Scottish Government	
12IA	Reasonable Assurance	
12IC	Reasonable Assurance	
12ID	Reasonable Assurance	
12IE	Reasonable Assurance	
12IF	Reasonable Assurance	
12IH	Limited Assurance	
12II	Reasonable Assurance	
12IJ	Reasonable Assurance	
12IL	Reasonable Assurance	
Overall	Reasonable Assurance	