

Health and Care (Staffing) (Scotland) Act 2019 - draft statutory guidance: consultation response

[Supporting documents - Health and Care \(Staffing\) \(Scotland\) Act 2019 - draft statutory guidance: consultation - gov.scot \(www.gov.scot\)](https://www.gov.scot/consultation/Draft/2023/09/Health_and_Care_(Staffing)_Act_2019_-_draft_statutory_guidance_consultation)

Published 22 June 2023, response due by 19th September 2023, SOSCN submitted response below on 14th September 2023.

This consultation is on the statutory guidance that will be issued by the Scottish Ministers to accompany the Health and Care (Staffing) (Scotland) Act 2019. The guidance will support relevant organisations in meeting requirements placed on them by the Act and relevant secondary legislation.

It has 20 chapters and 151 pages, most chapters cover Health, however Chapters 15 covers all care providers, and this includes daycare of children providers apart from childminders. Chapter 17 sets out new duties for the Care Inspectorate in relation to support staffing, so we have concentrated on responding to those two chapters.

Note this legislation has been passed and will be enacted in April 2024, the consultation is on the usefulness and clarity of the guidance, not the actual requirements of the Act.

Overall, we believe there should be specific guidance for each part of the health and social care sector as we believe daycare of children and especially school age childcare, although subject to this legislation, are not actually specifically even mentioned in this guidance. We have created this short response below as we do not expect the managers of services to wade through this guidance. For reassurance, there has always been a judgement on staffing in terms of inspections, but this Act does bring in some changes, and as you will see below, we ask that this is spelled out more clearly.

Irene Audain, MBE, Chief Executive, Scottish Out of School Care Network.

14th September 2023

19. Consultation Questions

Question 1(a)

Do you think the guidance is clear and easy to understand?

The guidance is too large and tries to cover far too many different aspects of the Act. There are many assumptions that service leaders will be able to take the time to investigate changes to legislation themselves, and it covers sectors where there are already staffing improvement toolkits and support systems, e.g., Health, to those sectors who are barely aware of this legislation and that it applies to them.

I am responding on behalf of a national charitable organisation promoting children's rights to high quality play, care and learning in school age childcare services across Scotland.

The Scottish Out of School Care Network (SOSCN) is a Scottish registered charity (SC020520), established in 1991 and is the national infrastructure umbrella organisation providing support, mentoring, training, information, and resources to the nearly 1,000 school-aged childcare services in Scotland, which provide childcare, play and learning to over 50,000 children. (Care Inspectorate daycare of children statistics, 2022).

All of our work is underpinned by a commitment to supporting and promoting the United Nations Convention on the Rights of the Child (UNCRC), in particular Articles 31; the right to culture leisure,

rest and play; Article 12, the right to consultation and Article 18; states parties to develop appropriate services to support families, including assistance with childcare for working parents. We also have a particular focus on children in need or on poverty (Article 22) and support the provision of care for children with disabilities (article 23). We are also committed to promoting and delivering the outcomes of Getting It Right For Every Child (GIRFEC). We engage strategically at national and local levels to assist in the development and delivery of policies relating to childcare, children's rights, and family support.

Our response relates only to Chapters 15 and 17 and only to Daycare of Children and the role of the Care Inspectorate. This informs our answers to the next set of questions.

We appreciate that this guidance has to cover a vast number of different types of health and social care providers, however, chapters 15 subsumes all under a general "care" term, so it is actually not clear that childcare is included, also in chapter 17 on the role of the Care Inspectorate, it has only one example from childcare, e.g. that a childminder (unless with an assistant) is not covered by the measures set out here.

Perhaps there needs to be specific, separate, guidance for health and allied professionals, social care providers and one for daycare of children providers.

For the school age childcare sector, it is not at all clear that this legislation applies to them and, given that this sector is experiencing a recruitment and retention challenge of staff, there is not enough in this guidance to reassure them that there is not going to be a sudden change, and this could put further stress and pressure on managers already finding it hard to get the right balance of staff. Everyone supports having the right mix of staff in place at the right time, in principle, but, at present, this lack of staff is potentially closing services down, or stopping them from expanding to meet parental demand for childcare places.

There is not enough said about proportionality – and this must apply in chapter 17 where care inspectors must be able to support services struggling to find staff as well as making judgements about the right mix of staff in place.

Question 1(b)

Please detail any specific areas of the guidance that you found unclear or hard to understand.

Particularly for the new duties in chapter 15 for care services, including childcare, and in chapter 17 about the Care Inspectorate, in relation to daycare of children, it would be much clearer to the childcare sector if the guidance sets out their current duties in relation to having the right mix of staff and then compare with this the future duties in this act.

Also, set out what powers the Care Inspectorate has now in relation to judging the right mix of staff within daycare of children and to set out what changes will be made when the act comes into force.

Comparison tables for both would be useful and, we hope, reassuring.

For example the guidance states in the introduction to Chapter 15 that "Note that the duty under regulation 15 (staffing) of [the Social Care and Social Work Improvement Scotland \(Requirements for Care Services\) Regulations 2011](#) has now been repealed and replaced with the requirements of the Health and Care (Staffing) (Scotland) Act 2019 **{this will be done at the point the Act comes into force and this guidance is published}**. Whilst the requirements of regulation 15 and the Act are similar, they are not identical and, therefore, care service providers should make themselves aware of the requirements of the Act."

It is not right to expect already busy managers across the care sectors to have to do the work to compare the differences in the repealed legislation and the new act coming into force, instead, the guidance should have a comparison table in plain English about what has changed.,

This approach may also be useful for other chapters, but we are only commenting on our specific area of expertise.

Question 2(a)

Do you think the guidance is comprehensive, in that it contains sufficient detail to be able to support organisations in meeting obligations placed on them by the Act?

It is not comprehensive enough for school age childcare services, which our organisation supports across Scotland, there needs to be specific examples from different daycare of children services, including school age childcare.

Question 2(b)

Please detail any specific areas where you felt information was missing or incomplete.

School age childcare is not actually specified in the document, yet it is the second largest daycare of children sector next to early learning and childcare services. Childcare overall is hardly mentioned, therefore we can see a need for specific guidance for specific sectors.

Question 3

Do you have any other comments on the draft guidance?

There is currently a staffing crisis across care services and daycare of children services. This is most acute in school age childcare services where staff need to be qualified to the same level as early learning and childcare staff, but have lower pay, more part time hours and are most likely to be employed in the third sector or independent sector. Therefore, currently, with the expansion of ELC many school age childcare services have lost their most skilled staff who have gone on to more secure posts in ELC. [osc-worforce-survey-results-2022.pdf \(soscn.org\)](https://www.soscn.org/osc-worforce-survey-results-2022.pdf)

The enactment of this legislation could not come at a worse time; therefore, any guidance should be very clear about gradually introducing processes such as, potentially, using statutory staffing tool kits, and extremely clear that the services and their representative bodies must be involved and consulted with any development of such resources in the future. As we pointed out earlier clear comparison tables to show the main differences between current regulatory requirements and those coming into place in April 2024 may help clarify what services must do to prepare for these changes.