

T: 0300 244 4000  
E: scottish.ministers@gov.scot

Chief Executives of NHS Boards

26 January 2021

Dear Chief Executive,

**Health and Social Care (Staffing) (Scotland) Act 2019 – Good Practice regarding professional advice**

I appreciate that you, your Health Board and all of your staff are currently working under unprecedented circumstances and have been since the early spring of 2020. The Scottish Government will continue to support you and your teams throughout the pandemic and the developing and ongoing programme of mass vaccination to seek to bring Covid-19 under control.

As you will be aware, the implementation of the Health and Care (Staffing) (Scotland) Act 2019 (“the Act”) has been delayed by the disruption caused by the Covid-19 pandemic, which has affected just about every aspect of Health and Social Care provision.

Whilst it was necessary to pause the majority of work relating to the implementation of the Act in March 2020, the Scottish Government remains absolutely committed to its introduction during the next Parliament. However, the aims and purpose of the Act, which are well understood in the Health and Care sectors, remain just as important as ever. As such, it is my request that, in advance of the commencement of the Act, its key principles and intent are taken into consideration in current practice in Health Boards. I appreciate, too, that Health Boards may already be working to this purpose.

The Act stipulates that:

1. It is the duty of every Health Board and the Agency to put and keep in place arrangements for –
  - a. seeking and having regard to appropriate clinical advice in making decisions and putting in place arrangements in relation to staffing under sections 12IA to 12IE and 12IH to 12IL,

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See [www.lobbying.scot](http://www.lobbying.scot)

- b. recording and explaining decisions which conflict with that advice.

With the full implementation of the Act, Health Boards will be required to ensure that appropriate advice is sought and taken into account when making decisions in relation to staffing. These arrangements will apply at Board level and at all levels throughout the organisation. Where decisions are made that are contrary to that advice, the Board will be required to explain the decision, identify any risks that the decision may cause and any mitigation they have put in place. This should include seeking to mitigate any risks arising from decisions where the advice has not been acted upon.

I am conscious that at this point in the pandemic NHS Boards are required to make decisions regarding changes to service delivery models and skill mix. Therefore, in advance of implementation of the Act I request that all NHS Boards should seek as far as possible to put systems in place that ensure when a Health Board makes decisions in relation to staffing, professional advice has been provided at the right level, including from Nurse and Medical Directors, where appropriate. Where decisions are made contrary to such advice associated risks should be identified, recorded and any relevant risk mitigation put in place.

As good practice, I trust that the Board will engage with the spirit and intent of the Act pending its implementation, to ensure that the safety and wellbeing of both patients and staff continues to be paramount.

If you have any questions or wish to discuss this further, please contact [CNOD\\_Admin@gov.scot](mailto:CNOD_Admin@gov.scot).

Kind regards,



**JEANE FREEMAN**