

From: Royal College of Nursing Scotland

Received: 4 March 2024

Subject: The NHS (Common Staffing Method) (Scotland) Regulations 2024

Dear Convenor

Following our letter to you last week (copy attached for reference) regarding the NHS (Common Staffing Method) (Scotland) Regulations 2024, we have now reviewed the SPICe briefing which summarises our concerns. We note that SPICe approached Scottish government officials for a response to our concerns and how they might be addressed.

We do not disagree that, where HIS recommends that a tool needs wholesale “replacement”, the 2019 Act requires that the new version is prescribed in regulations. That is clear from the provisions of section 12IR (as inserted into the 1978 Act by section 4 of the 2019 Act) specifically 12IR (1) (b) as they interact with section 12IJ (3) (as inserted into the 1978 Act by section 4 of the 2019 Act). However, we believe the Scottish Government’s is taking an impractical approach to the reading of the Act, meaning that small, administrative revisions to any given tool would require Parliamentary approval, because such revisions would equate to the ‘replacement’ of the existing tool under the provisions 12IR (1). In our view this is a disproportionate and too broad an interpretation of the word “replacement.” Should the Scottish Government wish to re-express their argument by seeking to rely on the provisions of section 12IR (2) or 12IR (5), which use the word ‘revised’, rather than ‘replacement’, we would similarly argue that a sense of proportion in interpreting the language of the Act is required.

As long as the staffing tools are appropriately located and access to them appropriately administered (as is the case at currently), we struggle to see how naming of the current tool, but without a version number, in the regulations would lead to confusion for those using the tools.

It also remains the case that if regulations stipulate existing tools (some of which it has been acknowledged are flawed and some of which are currently under live review), the services and staff using these tools will be stuck with these for an unspecified amount of time, simply for the sake of naming versions in the regulations, which is not helpful or in the spirit of the legislation.

We continue to believe it would be preferable for the regulations to refer to the tools by name and not by version. This would negate the need to update the regulations each time the tools require minor updates.

Kind regards

Carol

Carol Harris (she/her)

Communications and Public Affairs Manager