

Cabinet Secretary for NHS Recovery, Health and Social
Care
Rùnaire a' Chaibineit airson Ath-shlànachadh NHS, Slàinte
agus Cùram Sòisealta
Neil Gray MSP

 **Scottish Government**
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8 March 2024

Dear Clare,

RE: SSI – National Health Service (Common Staffing Method) (Scotland) Regulations 2024

Thank you for your letter dated 6 March 2024 regarding the National Health Service (Common Staffing Method) (Scotland) Regulations 2024. I appreciate the committee's consideration of the negative instrument and the subsequent questions posed after correspondence with the Royal College of Nursing (RCN).

As requested, I will address the specific assertions made by the RCN:

- 1) *That the Scottish Government “is taking an impractical approach to the reading of the Act.” RCN argue that, in interpreting the Act as requiring versions of tools to be stipulated in regulations, the Scottish Government is failing to make a suitable distinction between wholesale “replacement” of tools and small, administrative “revisions” that are likely to take place much more frequently*

The Scottish Parliament agreed the requirements in regard to changes to the tools in 2019. Therefore, when commencement of the Health and Care (Staffing) (Scotland) Act 2019 takes place on 1 April 2024, the agreed process will be in place to provide timelines for future tool reviews, as well as the supporting governance process to align with the legislative requirements. The 2024 Regulations prescribe the specific version of each tool that must be used.

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Where a replacement version of a tool is recommended by Health Improvement Scotland (HIS), the 2019 Act requires that the new version is prescribed in regulations. This means that the current tool will always be clearly identified within regulations. It will also ensure that those required to use a prescribed tool can easily locate and have certainty that they are using the correct tool.

Please be assured that a distinction is being made between routine and minor updates. For example, correcting a spelling error would not trigger the requirement of a version change. However a revision to a tool that changes the calculations, inputs or outputs, would be considered a replacement and would trigger a version change, requiring Ministerial consideration and approval.

- 2) *That naming of the current tool without reference to a version number should not lead to confusion for those using the tools “As long as the staffing tools are appropriately located and access to them appropriately administered (as is currently the case)”*

The Scottish Parliament agreed the requirements in regard to changes to the tools in 2019. In addition to the information provided above, as the various staffing level tools are prescribed in legislation, officials identified a need to include sufficient information to ensure that each tool can be clearly identified.

Whilst ensuring that each tool is clearly named, each tool will also need to include a version number. This is to ensure that if the same tool is subsequently developed by HIS, it would be distinguished by using a different version number. This is a similar process to documents being referred to in legislation, where a publisher’s name, place and year of publication, and where possible the ISBN number, are included.

- 3) *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.”*

Tool replacements and revisions can be made at anytime. However, it would not be effective use of the Scottish Government’s time nor value for money to propose revisions on a monthly basis.

A distinction is made between regular and minor updates to tools, which would not require Ministerial approval, and a revision which would require Ministerial approval in line with legislation. A revision that falls outwith the update cycle would likely be prioritised for an ad hoc replacement and Ministerial permission would be sought.

For example, as the RCN have noted HIS are currently redeveloping the Maternity Staffing Level tool and a Mental Health & Learning Disabilities in-patient staffing level tool; the Scottish Government has committed to submitting regulations outwith the planned annual cycle as required, to enable these to be approved for use on completion. As with all business, any exceptional risks would be escalated through the appropriate channels within the Scottish Government for consideration and direction.

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There have been detailed discussions with RCN on the assertions that some existing tools are flawed and officials have yet to reach an agreed position. However, the Scottish Government accepts that a formal review will be needed to validate or dispute the concerns raised. Until that process has been concluded, recommendations for changes to be made cannot be proposed by HIS nor agreed by the Scottish Government. It is worth noting that the tools were developed in conjunction with the RCN and others as key stakeholders and used for over ten years.

4) *In conclusion, we would ask the Scottish Government to respond directly to the RCN's principal assertion that "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."*

To reiterate the point, minor updates will not require regulation updates. Revisions that make a material change to a tool, such as a change to the calculators, inputs or outputs, or replacement will require regulation updates. The aim of version control is to ensure those required to use a prescribed tool can easily locate, and have certainty that they are using the correct tool. This also provides legal certainty as well as enabling appropriate parliamentary scrutiny. Where a replacement version of a tool is recommended by HIS, the 2019 Act requires that the new version is prescribed in regulations. This means that the current tool will always be clearly identified in regulations.

I hope that the details I have provided are helpful and I am grateful for the Committee's continued consideration of the Act implementation.



NEIL GRAY MSP

