

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

Graham Simpson MSP
Convener
Delegated Powers and Law Reform

By Email.

Our ref: A22172924
20 September 2018



I would like to thank the Delegated Powers and Law Reform Committee for their consideration of the Health and Care (Staffing) (Scotland) Bill. You note that, in relation to sections 12IA to 12IG, there is nothing on the face of the Bill about consequences of failure of Health Boards and the Common Services Agency to comply with the duties in the Bill.

The Bill inserts the provisions relating to Health Boards into the National Health Service (Scotland) Act 1978. As such, the existing powers contained in the 1978 Act for Scottish Ministers to take action where there are issues about discharge of Health Board duties will apply to the duties placed on Health Boards by this Bill. For example, there is a power of direction in section 2(5) of the 1978 Act which can be used generally or for specific matters (which could involve directing a particular Board). There are also powers in section 78A where there has been failure in provision of a service.

The guidance will not set out any sanctions, or consequences of failure to comply, that are not already in place. However, we expect that the guidance will reference and signpost the existing provisions in the 1978 Act outlined above.


The guidance will also reference and signpost existing performance and review mechanisms, clarifying that assessment of compliance with the duties in the Bill will be included in these processes. These measures are already in place to monitor Health Board compliance with performance requirements, and it is therefore expected that non-compliance with the duties in this Bill would be managed through, and in line with, existing performance and monitoring process and escalation levels within Scottish Government and through Healthcare Improvement Scotland (HIS)

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

If following improvement support and intervention there are still areas of non-compliance this can ultimately lead to the powers of intervention in the 1978 Act detailed above being applied.

The Financial Memorandum sets out the provision of additional resource to support Boards to apply the common staffing methodology, and tools, consistently.

Best wishes



JEANE FREEMAN

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

St Andrew's House, Regent Road, Edinburgh EH1 3DG
www.gov.scot

