

Health and Care (Staffing) (Scotland) Act 2019

2024-2025 Annual Report



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Overview

The Health and Care (Staffing) (Scotland) Act 2019 started on the 1st of April 2024.

The Act introduced duties that all Local Authorities and Integration Authorities must comply with. This includes making sure that providers and health services that we are contracting with are abiding by the guiding principles of the Act, ensuring appropriate training is in place for staff and that services have sufficient staff in place.

The Local Authority and Integration Authorities must publish an annual report going forward to show how the new legislation is included in any newly contracted services for the previous financial year.

The report below is for services commissioned by East Lothian Health and Social Care Partnership for the financial year 2024-25.

The government has asked that we publish information only in relation to the processes in place for planning and procuring services. The Partnership also continue to monitor all providers once services are commissioned to ensure that they continue to implement the new legislation. While this information is not contained in the report, should you wish to contact us to learn more about this, you can submit this request via email to elhscp@eastlothian.gov.uk

Legislative responsibilities

Under section 3(2) of the [Health and Care \(Staffing\) \(Scotland\) Act 2019](#) (“the Act”), every local authority and integration authority must have regard to a number of listed factors when planning or securing the provision of a care service from a third party:

- the guiding principles in the Act (section 1 of the Act);
- the requirement on care service providers to have regard to the guiding principles (section 3(1) of the Act);
- the duty on care service providers to ensure appropriate staffing (section 7 of the Act);
- the requirement on care service providers with regard to training of staff (section 8 of the Act);
- the requirement on care service providers to have regard to guidance issued by the Scottish Ministers (section 10 of the Act);
- the duties on care service providers under [Chapter 3 of Part 5 of the Public Services Reform \(Scotland\) Act 2010](#), for example with regard to registration of care services; and
- the duties on care service providers under Chapter 3A of Part 5 of the Public Services Reform (Scotland) Act 2010, for example with regard to the use of any prescribed staffing methods or staffing tools. Note that the [Health and Care \(Staffing\) \(Scotland\) Act 2019](#) inserted chapter 3A into the Public Services Reform (Scotland) Act.

Section 3(6) of the Act states that relevant organisations must publish information annually on the steps they have taken to comply with the requirement in section 3(2) regarding the planning and securing of care services and any ongoing risks that may affect their ability to comply with this requirement.

This template should be used by local authorities and integration authorities to publish the information required and should be read in conjunction with the statutory guidance that accompanies the Act, specifically chapter 15.

The information in this template should relate to the financial year, i.e. 01 April to 31 March. All reports must be published by 30 June at the latest each year.

In order to collate the information published, the Scottish Government also requests that you send the completed template to hcsa@gov.scot.

Declaration

Name of local authority / integration authority:	East Lothian Health and Social Care Partnership
Report authorised by:	<i>Laura Kerr</i>
Designation	<i>General Manager – Planning and Performance</i>
Date	<i>27 May 2025</i>
Details of where the report will be published	<i>ELHSCP Webpages</i> www.eastlothian.gov.uk/safer-staffing

1. Compliance with Section 3(2) of Health and Care (Staffing) (Scotland) Act 2019

Information Requirement: Please detail the steps you have taken as an organisation to comply with section 3(2) of the Health and Care (Staffing) (Scotland) Act 2019.

3(2) In planning or securing the provision of a care service from another person under a contract, agreement or other arrangements, every local authority and every integration authority (within the meaning of section 59 of the Public Bodies (Joint Working) (Scotland) Act 2014) must have regard to:

- (a) the guiding principles for health and care staffing, and*
- (b) the duties relating to staffing imposed on persons who provide care services:*
 - (i) by virtue of subsection (1) and sections 7 to 10, and*
 - (ii) by virtue of Chapters 3 and 3A of Part 5 of the Public Services Reform (Scotland) Act 2010.*

1.1 Commissioned Care at Home Services

A framework of approved providers for care at home services has been secured via Scotland Excel in November 2024 (Contract 2022 for Care and Support Services). The framework includes associated Contract Schedules, service specification and Flexible Framework Terms.

Scotland Excel undertake due diligence and Procurement checks with providers, with additional local terms further detailing relevant Safer Staffing requirements.

The Framework Contractual Terms clearly set out Safer Staffing requirements under Health and Care (Staffing) (Scotland) Act 2019, including but not limited to:

- PVG compliance
- Contracted care only delivered as detailed in individual contracts
- Requirements for Safer Recruitment Policy and Procedures to satisfy Care Inspectorate requirements around employment and management of staffing
- Minimum CI grading, Equalities compliance for staff and service users
- Incident reporting and circumstances when this is shared with Care Inspectorate
- Compliance for itself and staff with Scottish Social Services Council
- Supporting attainment of relevant qualifications, training, supervision, registration of its staff and management to staff ratios.
- Data protection
- Appropriate Staffing levels, including assurances around any agency use and Business continuity
- Safer Recruitment – taking account of Protection of Adults at Risk of Harm and Child Protection
- Have regard for the health and safety of staff

The providers under this framework include:

Provider Name	Date Contracted
Call In Home Care Ltd	02/11/2024
Care Support Scotland	02/11/2024
Carr Gomm Scotland	02/11/2024
Cera Home Care Ltd	02/11/2024
Crossreach (Eskmills)	02/11/2024
Delight Supported Living Ltd	02/11/2024
Elcap	02/11/2024
Kincare Health Solutions Ltd	02/11/2024
Redwoods Caring Foundation	02/11/2024
The Action Group	02/11/2024

1.2 Community Support

East Lothian commissioned Elder Street – Penumbra via a PCS tender for a Community Mental Health Rehabilitation and Recovery service (Contract date 01/07/2024). Penumbra is registered with the care inspectorate.

Our commissioning follows the Scottish Government guidance ***Procurement of care and support services: best practice guidance summary - updated June 2021***

Where possible a 'light-touch' regime for the procurement of services is followed, as set out in regulations 74-76 of the Public Contract (Scotland) Regulations 2015.

Ethical Commissioning is key and takes places before the procurement process begins. This approach is set out in our Commissioning strategy and means that:

- We will work with communities, providers, advocacy bodies, carers, supported people and staff when it comes to commissioning, designing and developing services
- We will refocus our commissioning on preventative and early intervention approaches that are outcome / recovery focussed and promote independence, participation and self-management.
- We will actively develop, support and promote community based service provision.
- We will endeavour to commission services which will provide support within an individual's own home, local community or in a homely setting.

Once the commissioning and design phase is complete, for procurement of any care or support service to progress, a procurement strategy is completed that includes stakeholder mapping and fair work service strategy checklist. Each Invitation to Tender and the associated Conditions of Contract clearly sets out requirements for providers to comply with the Health and Care (Staffing) (Scotland) Act 2019 as well as the need to ensure:

- 1) Payment of Scottish Living Wage to Adult Social Care staff as a requirement of the Contract;
- 2) Requirements for staff training including adult support & protection are met;

3) That the Service is run by qualified, dedicated and experienced staff, supported by trained volunteers; and

4) Compliance with a detailed staffing schedule of the contract conditions addressing: training, experience, notification, registrations, codes of practice, supervision, ongoing support, CPD and appraisals, Safer Recruitment policy, PVG, use of agency staff, and probity guidance.

During the evaluation of the tender process, a provider is required to complete a method statement demonstrating how the organisation supports and develops staff. This includes

- A description of the staffing resources dedicated to the Contract including management and supervisory and support arrangements
- Specific expertise staff have to ensure that the service specification requirements are met
- Details of the qualifications (as per the contract requirements) and experience of the staff who will be providing the Services.
- Details of the core training that staff receive.

1.3 Care Homes

East Lothian contracted with one new care home provider, Hilton Lodge under the Standard Residential Contract on 05/09/2024. East Lothian HSCP does not actively commission any new care home providers in our area. Any new homes opening are private businesses that have sought planning permission from ELC planning department and have built or opened the home using the Care Inspectorate required standards.

Any new care home opening within the county would be subject to procurement processes, including a police check for directors, and any other relevant checks (i.e. financial) prior to contracting. Discussions take place with any new provider to put in place a relevant contract.

Planning & Commissioning work closely with the CI registration team to gain updates on registration and confirmation when this has been completed. Onboarding of any new service also includes a meeting with the provider's senior management team and new/existing care home manager which includes an introduction to East Lothian care home services and the relevant East Lothian teams in place to provide support to our local homes. This includes the NHS Care Home Team, ELCHASE, Social Work, Quality Improvement service and the Planning and Commissioning Officer. Reporting requirements and key contacts are also shared with the provider. Copies of policies and public and employers' liability insurance are gathered. Prior to the new building being opened, a walk around is completed with key staff, staffing models and recruitment processes are discussed. Where the provider is a regional or national provider, a check on the CI grades across the whole group is conducted to highlight any homes in their organisation of concern.

The Standard Residential Contract clearly sets out that the provider must:

- Be PVG Compliant
- Have a personal care plan in place for the resident and conduct regular reviews to ensure services meet the residents needs
- Issue residency agreements to all clients detailing terms and conditions of their placement to provide residents with clarity and understanding of the services provided

- Have internal quality assurance processes in place to monitor the service and share required information with the Partnership on request
- Have a complaints process in place
- Have safer staffing processes in place
- Employ sufficient and suitably qualified staff in the service and that staff should be registered with the SSSC or NMC where the roles undertaken require this.
- Have equal opportunities policies in place and deliver services to staff and residents in a non-discriminatory manner
- Ensure that services are delivered to meet a specific range of outcomes for service users
- Provide training to staff to enable them to deliver all aspects of care required by the resident
- Have regard for the Health and Safety of Staff including relevant policies including moving and handling.

2. Ongoing risks that may affect ability to comply with duty set out in section 3(2) of Health and Care (Staffing) (Scotland) Act 2019

2.1 Commissioned Care at Home Services

Ongoing risks exist around social care recruitment and retention of high-quality staffing in care at home services, often there is high turnover and movement to NHS or internal services where terms and conditions exceed those available in the external market. The saturated social care recruitment market also contributes to the continued challenge for providers ensuring that they only recruit, train and retain suitable candidates and promote or create the career pathways that are not wholly obvious in the social care sector. This can have a direct negative impact on the capacity and delivery of sustainable high-quality services, service user choice and meeting outcomes as per commissioned services contract.

Reduction in the Social Care budget in the current financial year, and planned year on year reductions combined with current and forecast older people's population increase, serve to further create significant risk in providing high quality staffing levels, able to flex to population demands.

Increasing utilisation of the Home Officer Sponsorship Scheme for overseas workers by commissioned providers is becoming a dependent business model in assuring appropriate Safer Staffing as contracted. Whilst this brings high skill levels and committed workforce, future risk in back filling this capacity remains as people move on to the NHS or choose not to extend their Sponsorship arrangements. Recent announcements by central government proposing ending the Sponsorship Scheme will further contribute to care recruitment challenges.

In addition, we see an increase in under reporting of equalities related incidents where race is an aggravating factor on the part of the attitudes and actions of individuals receiving support, their carers or others involved in their care. Whilst there are existing protective legislative measures for staff, with provider and commissioner policies and procedures reflective of this and actively monitored, there is ongoing risk that staff teams are increasingly subject to racially motivated abuse, a culture of tolerance leading to under reporting and risk to mental health.

In managing risk to the welfare of staff whilst meeting the needs of vulnerable individuals, and positively challenging these situations at both individual and corporate responsibility levels, there remains situations where movement of staff or the removal of a service (to protect staff) where there is individual capacity in specific decision-making, further places risk on wider safer staffing levels that are already under pressure.

2.2 Community Support

There are number of general risks that include:

- Shortage of providers of care under come SDS options, limits choice in planning and securing providers
- Challenging recruitment landscape across social care roles

2.3 Care Homes

Recruitment within the care home sector continues to be challenging, in particular sourcing adequate nursing level staff. Providers are trialling new ways to pass some nursing responsibilities (i.e. medication administration) on to SVQ level 3 trained staff and increase higher level roles within the service to reduce the burden on nursing staff.

Homes continues to be monitored by the NHS Care Home Team in terms of clinical competency with any issues highlighted through the care home huddle. We are also seeing an increasing number of providers using overseas sponsorship to provide adequate staffing. While many providers are reporting that this has helped fill recruitment vacancies, the Partnership is aware this brings additional monitoring in the form of ensuring providers have appropriate Right to Work checks in place. This is also monitored by the Care Inspectorate.

Provision of stress and distress training for care home staff remains an area of need. Our Chief Nurse is currently undertaking a review of the stress and distress service being offered by ELHSCP to support care homes.