

Health and Care (Staffing) (Scotland) Act 2019: Scottish Borders Annual Report

Declaration

Name of local authority / integration authority: **Scottish Borders Council**

Report authorised by:

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Director of Adult Social Work and Care

30/06/26

Details of where the report will be published: **Scottish Borders Council and Health and Social Care Partnership websites.**

Information Required

- 1. 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:**

1.1 Background

During financial year April 2025 through to March 2026 the majority of commissioning arrangements across children's and adults commissioning areas were simply extended for a further year, some detail of which is below. These commissioning arrangements in the main were simply extended in order to allow time to develop a new approach to commissioning in the Scottish Borders.

However major developments relating to commissioning have progressed significantly or are now in the planning during the year in question which will be detailed further in this report.

1.2 Developing approach to commissioning

A range of improvements in terms of how we will commission have progressed since the last report and are summarised below:

- Last report we informed that a Strategic Commissioning Board had been established and this is now meeting regularly and overseeing key developments relating to commissioning.
- We reported on having developed the first Commissioning Strategy for the Borders. This is currently out for consultation with various stakeholder groups and will be formally adopted in August 2026.
- The mapping of long-standing commissioning arrangements is progressing with the latest development being the availability of a Power BI dashboard.
- The commissioning of a whole system modelling exercise has concluded with a series of outputs highlighting current and anticipated demand across seven key areas of health and social care delivery. We also have a strategic planning tool which will allow us to model assumptions and scenarios to better anticipate demand for future services.

1.3 Areas of commissioning extended for a further year

As a result of focussing on developing our future approach to commissioning several key areas of commissioned delivery were simply extended. These commissioning areas include:

- Care at home – contracts with existing providers were simply extended by one year from April 2025 to June 2026. However this will be the last extension as care at home provision has been successfully tendered and we will be awarding new providers on to a new care at home framework in July 2026. The detail of new clauses relating to Health and Care Staffing are provided later in this report.
- Supported living - contracts with existing providers have been extended by one year from April 2026 to March 2027. However a four year contract will be implemented during 2026 which will have within it the new Health and Care Staffing clauses.

- Extra Care Housing - contracts with existing providers have been extended by one year from April 2026 to March 2027. The new Health and Care Staffing clauses will be incorporated into the new contracts by way of variations.
- Third sector community services - contracts with existing providers have been extended by one year from April 2026 to March 2027. However a major review of third sector provision has now commenced and we are currently in the process of developing a Needs Assessment.
- Residential and nursing home placements – placements were made as usual utilising the National Care Home Contract (NCHC) terms and conditions and we await confirmation that the Health and Care Staffing requirements are reflected in any updated NCHC Minute of Variation.
- The ELC framework is a call-off from a Scottish Government contract for the Early Learning and childcare framework. This runs from 1st August to 31st July each annum, respectively and the one-year extension was given for these dates in 2025-26.
- For children and families (with the exception of one provider) these were extended for 1 year in 2025-26 or were in place already for a longer period of time.
- For education, these in the main got 1 year contract extensions from 2025-2026. Some were split 3months+3months and then 6 months but all eventually got 1-year extensions. Some newer commissions were already in place for longer (Safe Families).

1.4 Exceptions

Although the majority of commissioning has simply been extended for the year in question there are some exceptions. They are:

- Residential and nursing placements are ‘commissioned’ continually based on the assessed need of the individual. These placements use the NCHC when local or elsewhere in Scotland and the relevant staffing clauses are included below for information.
- Some services have been awarded a contract over a longer period of time, up to four years, so these did not require a short term extension.

1.5 Current relevant clauses and checks

1.5.1 Residential clauses relevant to safe staffing:

National Care Home Contract (NCHC) clauses used:

A.9.7 The Provider shall employ and ensure that at all times sufficient qualified and suitably trained and experienced Staff are available to deliver the Service. The level of Staffing shall at all times be no less than that agreed by the Care Inspectorate in a Staffing schedule attached as a condition of registration (if applicable) or to the statutory requirement contained in Regulation 15 of SSI 2011/210, namely the Social Care and Social Work Improvement Scotland (Requirements for Care Services) Regulations 2011. Where the role and duties of Staff require them to be registered with the SSSC or the Nursing and Midwifery Council, the Provider will ensure this is in place and is maintained.

A.9.12 Where the Provider reduces either the Staff-to-Resident ratio or the qualified Staff-to-Resident ratio with the agreement of the Care Inspectorate, because of a change in the dependency levels of Residents, the Council reserves the right, in consultation with the Provider to review the Council’s Approved Rate, the Additional Service Charge, Additional Care Charge and the level of Care for each Resident.

A.12 STATUTORY OBLIGATIONS AND GUIDANCE

A.12.1 The Council and the Provider shall exercise their powers, obligations or discretions in terms of the Contract in a reasonable manner and in accordance with their statutory and regulatory obligations.

A.12.2 Throughout the duration of this Contract the Provider shall observe and comply with all statutory enactments, regulations and by-laws applicable to the Care Home, including without prejudice to the foregoing generality all health and safety standards and regulations and they shall comply with all Care Inspectorate registration conditions, requirements and Care Standards, and this Contract.

A.12.3 Should any procedures or other matters regulated by this Contract become subject to statutory provision which results in any change to the manner in which such procedures or other matters require to be dealt with then such changes shall take precedence over that contained in the Contract.

In terms of updating the NCHC, the following clause has been in the Minute of Variations (MOVs) since the original contract. This contract is drawn up nationally by Scotland Excel for all Local Authorities and is it not varied or written by local

authorities as such however this matter can be raised with Scotland Excel. We will support any appropriate updating required to any national contracts as well as all of our own local contracting. This will of course be coupled with Care Inspectorate regulating services using the most up to date legislation and regulations.

IT IS HEREBY AGREED:

1. *That both parties note the continuing application of Clause A.1.1 of the 2013-14 contract, namely -*

“Any reference to any Act of Parliament shall be deemed to include any amendment, replacement or re-enactment thereof for the time being in force and to include any by-laws, statutory instruments, rules, regulations, orders, notices, codes of practice, directions, consents or permissions (together with any conditions attaching to the foregoing) made thereunder.”

As a consequence, the most recent version of said legislation and instruments, including (without limitation) the national health and care standards or national performance framework relating to any part of the Contract will apply to the provision of Care under the Contract.

1.5.2 Care at home clauses relevant to safe staffing:

The Provider shall ensure that all staff employed or to be employed by the Provider are suitably qualified, trained and/or experienced to deliver the Service and meet all requirements of this Contract. If necessary, the Service Provider shall engage such staff so as to meet these requirements.

The Provider shall be a person fit to provide the Service in terms of the Regulations and the Provider shall at all times use and ensure that there are on duty sufficient suitably trained and experienced staff to ensure that the Service is provided in accordance with this Contract.

The Provider shall comply with any requirement under Part 3 of the Regulation of Care (Scotland) Act 2001 for staff to register with the Scottish Social Services Council and comply with any relevant Code of Practice issued by the Scottish Social Services Council.

The Provider shall support non-qualified staff and to attain any skills and qualifications required of them by the Scottish Social Services Council. In order to provide the Service and the Provider shall keep training records for all staff and make such records available for inspection by the Council for the purpose of monitoring this Contract.

The Provider shall provide staff development, support, supervision, and clear and effective leadership.

The Provider shall ensure that staff meet the requirements of the Service Specification in relation to care planning, in that staff that are responsible for the support of Service Users are aware of their outcomes, how to plan for and meet these outcomes, and are able to communicate effectively with Service Users.

The Provider shall maintain an ongoing programme of training to ensure that staff who are employed in the provision of the Service receive the level of training required and appropriate to the needs of the Service Users. In order to ensure compliance with legislation and continuously improve service quality, the Provider shall be required to:

- (i) ensure that staff receive training on equalities matters appropriate to the Service;*
- (ii) record staff development; and*
- (iii) report on this annually to the Council, using such reporting information as is required to be submitted to the Care Inspectorate in respect of training.*

1.5.3 Learning Disability clauses relevant to safe staffing:

Clause 3 – Provider’s obligations:

	<p><i>In supplying the Service and otherwise when performing the Contract, the Provider must comply in all respects with:</i></p> <p><i>all applicable law;</i></p> <ul style="list-style-type: none"> <i>a) any applicable requirements of regulatory bodies; and</i> <i>b) Good Industry Practice.</i>
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Service Specification – Schedule B

Clause 16.2

The Provider will ensure Staff deliver the Service in accordance with policies and procedures which continually meet the requirement of the Care Inspectorate, other regulatory bodies as appropriate and the Council as lead bodies for the Protection of Vulnerable Groups. The policies and procedures will guide Staff in the delivery of the Service, will be embedded in day to day practice and should be quality assured.

Therefore as you will be aware, this includes the care inspectorate guidance and requirements on staffing levels as well as the 2019 Act.

Clause 26.2

The Provider will ensure there is sufficient Staff capacity in place to guarantee the following whilst delivering the Service:

Every effort should be made to ensure that people have consistency of support Staff, so that the Service User experiences minimal changes in personnel carrying out their care and support;

Staff will be deployed in a flexible way to meet the Service Users’ needs; contingency plans are in place to allow the Service to respond to either demand for

increases or reductions in support packages for Service Users to ensure that Staff can be appropriately re-deployed or rotated where there is a relevant need or to prevent staff burnout;

Professional management and supervision of the Service over a 24 hour period (out of hours);

Robust policies and procedures for staff development, support and peer support, supervision, clear and effective leadership and health and safety;

A range of staff suitably trained and qualified in the care and management of people with complex needs and/or multiple vulnerabilities in a community setting;

A robust monitoring system in place to ensure that all staffing hours are delivered per contract for each individual.

1.5.4 Children's and Young People clauses relevant to safe staffing:

The Provider will fulfil its statutory obligations concerning the employment of Staff and at all times ensure it has a sufficient number of suitably trained, qualified and competent Staff in accordance with the Law and Guidance.

The Provider will ensure that all Staff who are required to be Registered, are Registered with the appropriate Regulatory Authority, hold and maintain the required Registration, including without limitation, the Scottish Social Services Council (SSSC) and, for example the General Teaching Council Scotland (GTCS) for Teachers.

The Provider will comply with the SSSC Code of Practice and, if applicable, the Code of Practice and Professionalism of the GTCS (including as they may be, from time to time, revised or replaced) and take all reasonable steps to secure the compliance by all Staff with any relevant codes of practice and Guidance issued by the relevant Regulatory Authorities.

1.5.5 Planned clauses to ensure adherence to the Health and Care Staffing Act duty and principles:

The following clauses have been developed to be used in future commissioning and contracting arrangements. These clauses will be used in our new Care at Home contracts once in place later in 2026 as well as within our newly revised Supported Living contracts once in place, again later this year.

Attached as Appendix 1 you will find a spreadsheet which has been developed to allow us as a local authority to seek the assurance we are duty bound to acquire that the providers we have commissioned are fulfilling their duty under the Act.

1.0 Safe Staffing

The Provider shall, at all times, comply with the Health and Care (Staffing) (Scotland) Act 2019 and all associated statutory guidance and principles.

1.1 Pursuant to Section 7 of the 2019 Act, the Provider shall ensure that in the provision of the service, suitably qualified and competent individuals are working in the service in such numbers as are appropriate for:

- (a) the health, wellbeing and safety of Service Users;*
- (b) the provision of safe and high-quality care,*
- (c) in so far as it affects either/both of those matters in this Clause 1.1, the wellbeing of Staff.*

1.2 The Provider shall:

- a. Provide safe, high-quality services ensuring the best outcomes for Service Users.*
- b. Ensure that, further to Clause X (Staffing), that Staff receive appropriate training, supervision and continuing professional development, according to Section 8 of the 2019 Act.*

1.3 The Provider shall maintain effective systems for:

- a. identifying, assessing, escalating, and responding to real time risks arising from staffing issues;*
- b. recording decisions where staffing levels diverge from professional or clinical advice, and documenting any disagreements raised through the Provider's escalation procedures;*
- c. ensuring staff wellbeing is considered in all staffing decisions, in line with the Act's guiding principles.*

4. The Provider shall supply the Council with any staffing related information reasonably required to demonstrate compliance with the Act, including:

- a. evidence of staffing assessments, workload tools (where applicable), and establishment reviews;*
- b. records of risk escalations and actions taken;*
- c. training compliance data.*

Such information shall be provided at agreed intervals or upon request.

5. The Provider shall have regard to the Scottish Ministers' published standards and outcomes for care services and shall take all reasonable steps to improve service quality, respect service users' dignity and rights, and incorporate staff and service user feedback into staffing decisions.

6. Any failure to comply with the above duties in this Clause 1 shall constitute a material breach of contract. Should this occur, the Provider must implement an agreed remedial action plan within timescales specified by the Council. Any breach may, at the Council's sole discretion, result in contractual

sanctions pursuant with Clause X (Termination), including suspension or termination.

2.0 Monitoring and Evaluation

2.1 *The Provider shall supply the following information to the Council on a quarterly basis in the agreed format:*

2.1.1 *The information to be submitted shall include the Full-Time Equivalent data for each of the following categories of Staff, where such Staff are employed by the Provider:*

- a. Manager (Registered)*
- b. Assistant Manager*
- c. Registered Nurse*
- d. Support Worker (including seniors)*
- e. Administration*
- f. Ancillary Staff*

2.1.2 *The Provider shall ensure that the data submitted includes, but is not limited to:*

- a. Workforce Establishment (FTE)*
- b. Staff in Post (FTE)*
- c. Vacancies (FTE)*
- d. Agency Usage (FTE)*
- e. Sickness absence*
- f. Staff Turnover, including Leavers (FTE)*

1.6 Plans for commissioning going forward

There are plans for major reviews of certain key areas of commissioning during the year 2026-27 and onwards. These are:

- A new framework for care at home delivery will go live in 2026 and support new models of care at home delivery with an upwardly revised volume of delivery being delivered by our external providers.
- A review of the third sector has commenced, and we are currently developing a Needs Assessment to determine what we need from the third sector going forward.
- Development of care villages in the Borders is a continuing strategic priority.
- Further Extra Care Housing developments will continue to be planned.

- A review of older adult day care is ongoing having concluded in two localities with a further three localities to address.

1.6.1 Further work in order to ensure compliance with the Act in the future

- All contracts will be amended to include specific clauses on the Health & Care (Staffing) (Scotland) Act 2019 and this Act will be discussed with providers in order to ensure compliance with the Act.
- The Health & Care (Staffing) (Scotland) Act 2019 will feature as part of exception reporting and in terms of the monitoring of providers.
- We will consider establishing a working group to support work that will ensure we actively embrace the guidance and principles of the Act across both our internal and externally commissioned services.
- There has been a wide-ranging management restructure within our Adult Social Work and Care directorate. This restructure has established new commissioning roles within the senior management tier and this will support effective commissioning and monitoring of compliance going forward.
- We will be developing an on-line return facility for provider's use to enable to provide the evidence we require by way of assurance they are complying with the Act.

2. Please detail any ongoing risks that may affect your ability to comply with the duty set out in section 3(2).

- Out of area placements of adults, children and young people present a real risk in that such placements are complicated by the existence of a host authority (commissioner) and this is accompanied by alternative contractual arrangements which very often are the contractual agreement used.
- Operational or practitioner 'commissioning' when decisions are needing to be made at pace for the safety of the child or adult in question and then

authorised are a risk area and it is important that any guidance we are developing for commissioners stresses that the Health & Care (Staffing) (Scotland) Act 2019 duty is a requirement when commissioning.

- On-going provider challenges linked to availability of staff, recruitment and retention challenges. This is very much compounded by being a rural area.
- Market interest and responsiveness is a real challenge.
- Challenges relating to the financial envelope and the difficulty in addressing and meeting the uplift requests from providers leading to significant risks associated with compromised sustainability.
- Increases in employer National Insurance contributions are a significant risk for providers as no funding has been provided to Councils to cover this increase.
- Inflationary increases relating to the cost of placements for adults and children and young people are placing significant pressure on council and health budgets.

3. Governance

This report has been shared with lead commissioners across children's and education services, learning disability and mental health services, adult and older adult services and will be shared at the Strategic Commissioning Board.