

# Health, Social Care and Sport Committee

## SSI cover note

### 9th Meeting, (Session 6), 2 November 2021

This paper invites the Committee to consider the following negative instruments:

- The NHS Education for Scotland Amendment Order 2021 (SSI 2021/330)
- The National Health Service (Free Prescriptions and Charges for Drugs and Appliances) (Scotland) Amendment Regulations 2021 (SSI 2021/335)

#### **Parliamentary procedure:**

Negative instruments are instruments that are “subject to annulment” by resolution of the Parliament for a period of 40 days after they are laid. This means they become law unless they are annulled by the Parliament. All negative instruments are considered by the Delegated Powers and Law Reform Committee (on various technical grounds) and by the relevant lead committee (on policy grounds).

Under Rule 10.4, any member (whether or not a member of the lead committee) may, within the 40-day period, lodge a motion for consideration by the lead committee recommending annulment of the instrument.

If the motion is agreed to by the lead committee, the Parliamentary Bureau must then lodge a motion to annul the instrument to be considered by the Parliament as a whole. If that motion is also agreed to, the Scottish Ministers must revoke the instrument.

If the Parliament resolves to annul an SSI then what has been done under authority of the instrument remains valid but it can have no further legal effect. Following a resolution to annul an SSI the Scottish Ministers (or other responsible authority) must revoke the SSI (make another SSI which removes the original SSI from the statute book.) Ministers are not prevented from making another instrument in the same terms and seeking to persuade the Parliament that the second instrument should not be annulled.

#### **For decision**

The Committee is invited to consider any issues it wishes to raise regarding these instruments.

**Title of Instrument:** [The NHS Education for Scotland Amendment Order 2021 \(SSI 2021/330\)](#)

**Laid Date:** 23 September 2021

**Reporting deadline:** 15 November 2021

**Type of instrument:** Negative

## Background

This instrument creates additional capacity and capability within NHS Scotland to provide health-related digital services. In doing so, NHS Education for Scotland will become one of the delivery arms of the Scottish Government's Digital Health & Care Strategy, with a particular focus on enabling the development of national patient-facing digital products and services.

## Purpose

This Order amends the NHS Education for Scotland Order 2002 which constituted the Special Health Board known as NHS Education for Scotland. Article 2 amends article 4(1) of the principal Order to confer on NHS Education for Scotland functions to provide information services. Article 3 removes references to legislation, in the schedule of the principal Order, that is no longer in force.

A copy of the Scottish Government's Policy Note is included in **Annexe A**.

## Delegated Powers and Law Reform Committee consideration

The Delegated Powers and Law Reform Committee considered the instrument at its meeting on 26 October 2021, and made no recommendations in relation to this instrument.

**Title of Instrument:** [The National Health Service \(Free Prescriptions and Charges for Drugs and Appliances\) \(Scotland\) Amendment Regulations 2021 \(SSI 2021/335\)](#)

**Laid Date:** 24 September 2021

**Reporting deadline:** 15 November 2021

**Type of instrument:** Negative

## **Background**

This instrument amends the 2011 regulations for prescription charges applied to English prescription forms if presented for dispensing in Scotland. It increases the amounts charged in line with increased charges in England.

## **Purpose**

These Regulations amend the National Health Service (Free Prescriptions and Charges for Drugs and Appliances) (Scotland) Regulations 2011 (S.S.I. 2011/55) (“the 2011 Regulations”). The 2011 Regulations provide that where a pharmacist provides pharmaceutical services to a patient who presents an English prescription form, that pharmacist must make and recover from the patient the charges specified in the National Health Service (Charges for Drugs and Appliances) Regulations 2015 (S.I. 2015/570) (“the 2015 Regulations”) as in force at a specified date, unless certain exemptions apply.

## **Delegated Powers and Law Reform Committee consideration**

The Delegated Powers and Law Reform Committee considered the instrument at its meeting on 5 October 2021 and made no recommendations in relation to this instrument.

**ANNEXE A**

**POLICY NOTE  
THE NHS EDUCATION FOR SCOTLAND AMENDMENT ORDER 2021  
SSI 2021/330**

The above instrument was made in exercise of the powers conferred by sections 2(1)(b) and (1C) and 105(6) and (7) of the National Health Service (Scotland) Act 1978. This instrument is subject to negative procedure.

**Purpose**

The above instrument makes amendments to NHS Education for Scotland's (NES) establishment Order which is the NHS Education for Scotland Order 2002 ("the 2002 Order"). The instrument confers functions on NES in relation to the provision of information services, including services provided by digital means, in support of the functions of the Scottish Ministers and other Scottish health bodies.

**Policy Objectives**

The purpose of this instrument is to create additional capacity and capability within NHS Scotland in order to provide health-related digital services to the people of Scotland. The powers are required to better reflect the way modern technology is developed and integrated across the whole of the NHS. In conferring these functions on NES, it is anticipated that NES will become one of the delivery arms of the Scottish Government's Digital Health & Care Strategy, with a particular focus on enabling the development of national patient-facing digital products and services, underpinned by secure data stores and staff and citizen authentication.

**Consultation**

No formal consultation has taken place on the instrument. However, the affected parties, principally NHS Education for Scotland, have been consulted.

**Impact Assessments**

Full Impact assessments have not been prepared for this instrument. Pre-screening has indicated that the changes made to the 2002 Order by this instrument will have no, or no significant, impact on the private, voluntary or public sectors or on the people of Scotland.

**Financial Effects**

No Business and Regulatory Impact Assessment (BRIA) is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

**Scottish Government  
Digital Health and Care  
September 2021**

**ANNEXE B**

**POLICY NOTE**

**THE NATIONAL HEALTH SERVICE (FREE PRESCRIPTIONS AND CHARGES FOR DRUGS AND APPLIANCES) (SCOTLAND) AMENDMENT REGULATIONS 2021**

**SSI 2021/335**

The above instrument was made in exercise of the powers conferred on Scottish Ministers by sections 69(1) and 105(7) of the National Health Service (Scotland) Act 1978. The instrument is subject to negative procedure.

This instrument amends the National Health Service (Free Prescriptions and Charges for Drugs and Appliances) (Scotland) Regulations 2011 (“the 2011 Regulations”) in respect of prescription charges applied to English prescription forms if presented for dispensing in Scotland.

**Policy Objectives**

The Scottish Government abolished prescription charges in Scotland on 1 April 2011. Practice since then has been to charge the rate applied in England where a patient presents an English prescription form for dispensing in Scotland (unless the patient falls within one of the exemptions found in the 2011 Regulations, including if they are ordinarily resident in Scotland and hold an Entitlement Card issued by a Health Board, in which case no charge will be made).

The National Health Service (Charges for Drugs and Appliances) Regulations 2015, which govern prescription charges in England, have been amended by the National Health Service (Charges for Drugs and Appliances) (Amendment) Regulations 2021 to increase the per item prescription charge in England by 20p from 1 April 2021, raising the charge to £9.35 for a single item, and for elastic hosiery to £9.35 for a single item and £18.70 per pair.

These Regulations therefore make amendments to the 2011 Regulations, to increase the amount to be charged in Scotland in respect of an English prescription. This is in alignment with the increased charges in England.

The existing exemption criteria remain unchanged, ensuring current reciprocal arrangements can continue whereby exempt patients presenting Scottish prescription forms in England can collect their medication free of charge and vice versa.

**Impact Assessments**

Impact assessments have not been prepared for this instrument as the amendment is to achieve an update to the prescription charge that has already been applied in England through the National Health Service (Charges for Drugs and Appliances) (Amendment) Regulations 2021. This amendment enables community pharmacies in Scotland to apply the correct charge when dispensing items against an English

prescription form. If this amendment was not brought into force then Scottish pharmacies could only apply the charge that was in force prior to 1 April 2021.

**Financial Effects**

The Minister for Public Health, Women's Health and Sport confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

**Scottish Government  
Chief Medical Officer Directorate  
Pharmacy and Medicines Division  
21 September 2021**