

# Health, Social Care and Sport Committee

## 35<sup>th</sup> Meeting, 2022 (Session 6), Tuesday, 29 November 2022

### Subordinate legislation

### Note by the clerk

#### Purpose

1. This paper invites the Committee to consider the following negative instrument:
  - [The National Health Service \(Charges to Overseas Visitors\) \(Scotland\) Amendment \(No. 3\) Regulations 2022](#)

#### Procedure for negative instruments

2. 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).
3. 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.
4. 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.
5. 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.

6. Each negative instrument appears on the Health, Social Care and Sport Committee's agenda at the first opportunity after the Delegated Powers and Law Reform Committee has reported on it. This means that, if questions are asked or concerns raised, consideration of the instrument can usually be continued to a later meeting to allow the Committee to gather more information or to invite a Minister to give evidence on the instrument. Members should however note that, for scheduling reasons, it is not *always* possible to continue an instrument to the following week. For this reason, if any Member has significant concerns about a negative instrument, they are encouraged to make this known to the clerks in advance of the meeting.
7. In many cases, the Committee may be content simply to note the instrument and agree to make no recommendations on it.

## Guidance on subordinate legislation

8. Further guidance on subordinate legislation is available on the Delegated Powers and Law Reform Committee's web page at:  
<http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/delegated-powers-committee.aspx>

## Recommendation

9. The Committee is invited to consider any issues which it wishes to raise in relation to this instrument.

**Clerks to the Committee**

**24 November 2022**

**SSI 2022/335**

**Title of Instrument:** National Health Service (Charges to Overseas Visitors) (Scotland) Amendment (No. 3) Regulations 2022

**Type of Instrument:** Negative

**Laid Date:** 14 November 2022

**Meeting Date:** 29 November 2022

**Minister to attend meeting:** No

**Motion for annulment lodged:** No

**Drawn to the Parliament's attention by the Delegated Powers and Law Reform Committee?** No.

10. The Delegated Powers and Law Reform Committee considered the instrument at its meeting on [22 November 2022](#), and made no recommendations in relation to this instrument.

**Reporting deadline:** 19 December 2022

**Purpose**

11. This instrument ensures overseas visitors from the Bailiwick of Guernsey and Malta will not be charged for certain treatment provided by Health Boards in Scotland, in accordance with reciprocal healthcare agreements.

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

## Annexe A

## POLICY NOTE

**THE NATIONAL HEALTH SERVICE (CHARGES TO OVERSEAS VISITORS) (SCOTLAND) AMENDMENT (NO. 3) REGULATIONS 2022****SSI 2022/335**

The above instrument was made in exercise of the powers conferred by sections 98 and 105 of the National Health Service (Scotland) Act 1978. The instrument is subject to negative procedure.

**Purpose of the instrument**

This instrument ensures overseas visitors from the Bailiwick of Guernsey and Malta will not be charged for certain treatment provided by Health Boards in Scotland, in accordance with reciprocal healthcare agreements.

**Policy Objectives**

This instrument amends the NHS (Charges to Overseas Visitors) (Scotland) Regulations 1989 (S.I. 1989/364) (the 1989 Regulations). The 1989 Regulations provide for Health Boards in Scotland to make and recover charges from overseas visitors (anyone not ordinarily resident in the UK) for relevant services provided to them, unless the overseas visitor, or the service which they receive, is covered by one of a number of exemptions.

This instrument amends schedule 2 (countries or territories in respect of which the United Kingdom Government has entered into a reciprocal agreement) of the 1989 Regulations, inserting the Bailiwick of Guernsey and Malta. This ensures that overseas visitors from those places are not subject to charges when accessing certain treatments provided by Health Boards in Scotland, in accordance with the reciprocal healthcare arrangements in place between them and the UK.

The UK Government have reached agreement on a new reciprocal healthcare arrangement with Guernsey, Alderney and Sark (the Bailiwick of Guernsey) which will come into force on 1st January 2023.

The 1975 Health Care Convention between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Malta (The Convention) sets out certain reciprocal healthcare arrangements for Maltese nationals in the UK and for UK nationals in Malta. While both the UK and Malta were EU Member States, although the Convention remained in force, specific provision for it under the 1989 Regulations was not necessary.

In common with all EU citizens, Maltese citizens can access certain services provided by Health Boards in Scotland, at no charge, as a result of the UK-EU Trade and Co-Operation Agreement (the TCA). However, arrangements under the Convention are distinct from those in the TCA and it is considered that post-EU exit

special provision is required to ensure that Maltese nationals who come to Scotland to access certain treatments under the Convention are not charged.

### **Consultation**

There is no statutory duty to consult in relation to this instrument. The Regulations will only impact on the administration of overseas visitor's charges within NHS Boards. However, Scottish Government will monitor the impact of these amendments on healthcare services.

The UK Government intend to lay a similar instrument amending the English overseas charging regulations, although the timetable for this has not yet been confirmed. Charging policy is a devolved matter, and the Scottish Government is responsible for taking forward any amendments to the 1989 Regulations.

### **Impact Assessments**

There is no, or no significant, impact on business, charities or voluntary bodies.

The impact on the public sector is that the existing obligation on Health Boards and the providers of certain healthcare services to make and recover charges from overseas visitors from the Bailiwick of Guernsey and Malta when providing certain services is removed.

An equality impact assessment has not been completed for these minor amendments. Health Boards have a duty to comply with the Equality Act 2010 in the provision of NHS care and services.

### **Financial Effects**

The Cabinet Secretary for Health and Social Care confirms that no BRIA is necessary, as the instrument has no, or no significant financial effect on the Scottish Government, local government or on business.

### **Guidance**

The Scottish Government will provide guidance to Health Boards and NHS Inform who will be involved in the operation of these changes.

Scottish Government  
Directorate for Healthcare Quality and Improvement

November 2022