

Health, Social Care and Sport Committee

24th Meeting, 2022 (Session 6), Tuesday 28 June 2022

Subordinate legislation – Negative SSIs

Purpose

1. This paper invites the Committee to consider the following negative instruments:
 - [The Public Health etc. \(Scotland\) Act 2008 \(Notifiable Diseases and Notifiable Organisms\) Amendment Regulations 2022](#)
 - [The National Health Service \(Charges to Overseas Visitors\) \(Scotland\) Amendment \(No. 2\) 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 these instruments.

Clerks to the Committee

23 June 2022

SSI 2022/212

Title of Instrument: The Public Health etc. (Scotland) Act 2008 (Notifiable Diseases and Notifiable Organisms) Amendment Regulations 2022

Type of Instrument: Negative

Laid Date: 16 June 2022

Meeting Date: 28 June 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? Unknown.

Reporting deadline: 26 September 2022

Purpose

10. This instrument amends Part 1 and 2 of schedule 1 of the Public Health etc. (Scotland) Act 2008 to add monkeypox to the list of notifiable diseases and to add monkeypox virus to the list of notifiable organisms.
11. A copy of the Scottish Government's Policy Note is included in **Annexe A**.
12. Section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 sets out that a negative SSI must be laid before the Scottish Parliament at least 28 days before the instrument comes into force. This instrument breaches the 28 day rule. Reasons for this breach are detailed in a letter to the Presiding Officer, attached at **Annexe C**.
13. The Delegated Powers and Law Reform Committee are due to consider this at their meeting on the 28 June 2022.

SSI 2022/213

Title of Instrument: The National Health Service (Charges to Overseas Visitors) (Scotland) Amendment (No. 2) Regulations 2022

Type of Instrument: Negative

Laid Date: 16 June 2022

Meeting Date: 28 June 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? Unknown.

14. The Delegated Powers and Law Reform Committee are due to consider this at their meeting on the 28 June 2022.

Reporting deadline: 26 September 2022

Purpose

15. This instrument ensures that certain NHS services for any overseas visitor who requires diagnosis or treatment for Monkeypox are provided without charge to that overseas visitor.
16. This instruments also updates the name of one of the diseases already listed in schedule 1, from "Wuhan novel coronavirus (2019-nCoV)" to "Severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2)".
17. A copy of the Scottish Government's Policy Note is included in **Annexe C**.

ANNEXE A

POLICY NOTE

The Public Health etc. (Scotland) Act 2008 (Notifiable Diseases and Notifiable Organisms) Amendment Regulations 2022**SSI 2022/212**

The above instrument was made by the Scottish Ministers in exercise of the powers conferred by section 12(2) of the Public Health etc. (Scotland) Act 2008 and all other powers enabling them to do so. The instrument is subject to negative procedure.

Summary Box

This instrument amends Part 1 and 2 of schedule 1 of the Public Health etc. (Scotland) Act 2008 to add monkeypox to the list of notifiable diseases and to add monkeypox virus to the list of notifiable organisms.

Policy Objectives

1. The effect of making the Regulations is that they will trigger duties on registered medical practitioners to share information (such as the patient's name, the patient's address and where considered relevant by the practitioner the name and address of the patient's place of work or education) with health boards where they have reasonable grounds to suspect that a person they are attending to has monkeypox. This information must then be shared onwards to the Common Services Agency and Public Health Scotland
2. The Regulations will also have the effect if monkeypox virus is identified by a diagnostic laboratory in Scotland, that the director of that laboratory must provide information to the health board in the laboratory's area and to the Common Services Agency and Public Health Scotland.
3. The Regulations are required to be in place in public health interests so that the notification requirements contained in the Public Health etc. (Scotland) Act 2008 ("the 2008 Act") will apply should a case of monkeypox arise in Scotland.

Consultation

4. There has been no public consultation in relation to this instrument. The public health community (Health Protection Scotland and Directors of Public Health) have been consulted on the proposed Regulations and are supportive.

Impact Assessments

5. There is no, or no significant, impact on business, charities or voluntary bodies.
6. The impact on the public sector is that relevant bodies providing certain NHS services will have additional duties in respect of sharing information regarding monkeypox with health boards and the Common Services Agency.

7. A Business and Regulatory Impact Assessment has therefore not been prepared in relation to this instrument.

Financial effects

8. The Minister for Public Health, Women's Health and Sport 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.

**Scottish Government
Directorate for Population Health**

15 June 2022

ANNEXE B

POLICY NOTE

The National Health Service (Charges to Overseas Visitors) (Scotland) Amendment (No. 2) Regulations 2022**SSI 2022/213**

The above instrument was made in exercise of the powers conferred by section 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 that certain NHS services for any overseas visitor who requires diagnosis or treatment for Monkeypox are provided without charge to that overseas visitor.

This instrument also updates the name of one of the diseases already listed in schedule 1, from “Wuhan novel coronavirus (2019-nCoV)” to “Severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2)”.

Policy Objectives

1. The changes made by this instrument are necessary to ensure continued availability of, and easy access to, NHS treatment in Scotland in the event of an outbreak of Monkeypox.
2. This instrument amends the NHS (Charges to Overseas Visitors) (Scotland) Regulations 1989 (S.S.I. 1989/364) (the 1989 Regulations).
3. Sections 98 and 105 of the National Health Service (Scotland) Act 1978 (the 1978 Act) authorise Scottish Ministers to make regulations for the making and recovery of charges from persons not ordinarily resident in Great Britain for NHS services, including that charges may only be made in such cases as may be determined in accordance with the regulations.
4. This instrument amends the 1989 Regulations to create a new exemption from charging for certain NHS services where diagnosis or treatment is provided to overseas visitors in response to an outbreak of Monkeypox.

This instrument amends schedule 1 of the 1989 Regulations, in relation to Scotland, to add Monkeypox to the list of diseases (such as Tuberculosis and Pandemic Influenza) in respect of which no charge is to be made or recovered. This is to ensure that there is no financial barrier to overseas visitors in Scotland being given NHS hospital treatment for Monkeypox, so that they are not discouraged from seeking treatment and thus ensuring the risk to public health from symptomatic visitors is minimised.

5. This instrument also corrects the name of a disease currently listed in schedule 1, from “Wuhan novel coronavirus (2019-nCoV)” to “Severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2)”.

Consultation

6. There has been no public consultation in relation to this instrument.
7. The UK Government laid a similar instrument, amending the English charging regulations, which came into force on 8 June 2022. Charging policy is a devolved matter with the devolved administrations responsible for taking forward any amendments to their charging regulations.

Impact Assessments

8. There is no, or no significant, impact on business, charities or voluntary bodies.
9. The impact on the public sector is that relevant bodies providing certain NHS services will have different obligations in respect of the making and recovery of charges from overseas visitors, but only in the context of the diagnosis and treatment of Monkeypox. The changes benefit patient care by providing access, without charge, by patients to the treatment and medicines they require.
10. An Impact Assessment has, therefore, not been prepared in relation to this instrument.

Financial Effects

11. The Minister for Public Health, Women’s Health and Sport 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

12. The Scottish Government will provide guidance to NHS Boards and NHS Inform who will be involved in the operation of these changes and the protection of public health during any outbreak of Monkeypox in Scotland.

Contact

13. John Cameron email: john.cameron@gov.scot can be contacted with any queries regarding this instrument.

Scottish Government

Directorate for Healthcare Quality and Improvement

15 June 2022

ANNEXE C

16 June 2022

Dear Presiding Officer,

THE PUBLIC HEALTH ETC. (SCOTLAND) ACT 2008 (NOTIFIABLE DISEASES AND NOTIFIABLE ORGANISMS) AMENDMENT REGULATIONS 2022

THE NATIONAL HEALTH SERVICE (CHARGES TO OVERSEAS VISITORS) (SCOTLAND) AMENDMENT (NO.2) REGULATIONS 2022

The Public Health etc. (Scotland) Act 2008 (Notifiable Diseases and Notifiable Organisms) Amendment Regulations 2022 was made by the Scottish Ministers under section 12(2) of the Public Health etc. (Scotland) Act 2008 on 16 June 2022.

The National Health Service (Charges to Overseas Visitors) (Scotland) Amendment (No.2) Regulations 2022 was made by the Scottish Ministers under sections 98 and 105 of the National Health Service (Scotland) Act 1978 on 16 June 2022.

Both these amending instruments are being laid before the Scottish Parliament today, 16 June 2022, and both will come into force at 17:00 today.

Section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 sets out that a negative SSI must be laid before the Scottish Parliament at least 28 days before the instrument comes into force. On this occasion, this has not been complied with and to meet the requirements of section 31(3) of that Act, this letter explains why.

[The Public Health etc. \(Scotland\) Act 2008 \(Notifiable Diseases and Notifiable Organisms\) Amendment Regulations 2022](#)

The amending instrument amends Part 1 and 2 of schedule 1 of the 2008 Act to add monkeypox to the list of notifiable diseases and to add monkeypox virus to the list of notifiable organisms.

We are bringing these provisions forward now to ensure that registered medical practitioners will be placed under a duty in terms of section 13 of the 2008 Act to report incidences of the disease and that directors of diagnostic laboratories will be placed under a duty in terms of section 16 of the 2008 Act to report incidences of the organism.

The notification duties will mean that information is provided to a health board so that the health board can consider whether it needs to use any of its powers under Part 4 of the 2008 Act.

Similar reporting duties were brought into force in England by virtue of the Health Protection (Notification) (Amendment) Regulations 2022 (SI 2022/616) and we understand that Wales and Northern Ireland will, imminently, also be making similar provision in subordinate legislation.

The National Health Service (Charges To Overseas Visitors) (Scotland) Amendment (No.2) Regulations 2022

The amending instrument is necessary to ensure that there is no financial barrier to overseas visitors in Scotland being given NHS hospital treatment for Monkeypox, so that they are not deterred from seeking treatment and thus reducing the risk to public health from symptomatic visitors.

The instrument amends schedule 1 of the 1989 Regulations, in relation to Scotland, to add Monkeypox to the list of diseases (such as Tuberculosis and Pandemic Influenza) in respect of which no charge is to be made or recovered.

The UK Government have laid a similar instrument, to amend the English charging regulations, which came into force on 8 June 2022. Charging policy is a devolved matter with the devolved administrations responsible for taking forward any amendments to their charging regulations.

The instrument also corrects the name of a disease currently listed in schedule 1, from “Wuhan novel coronavirus (2019-nCoV)” to “Severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2)”.

We are bringing these provisions into force now to provide clarity to those who are responsible for making and recovering charges.

A copy of this letter has been sent to Stuart McMillan, Convenor of the Delegated Powers and Law Reform Committee, and Gillian Martin, Convenor of the Health, Social Care and Sport Committee.

JOHN CAMERON
Planning & Quality Division