

Health, Social Care and Sport Committee

33rd Meeting, 2023 (Session 6), Tuesday, 7 November 2023

Subordinate legislation

Note by the clerk

Purpose

1. This paper invites the Committee to consider the following negative instrument:
 - [The National Health Service \(General Medical Services Contracts and Primary Medical Services Section 17C Agreements\) \(Miscellaneous Amendments\) \(Scotland\) Regulations 2023](#)

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

2 November 2023

SSI 2023/281

Title of Instrument: The National Health Service (General Medical Services Contracts and Primary Medical Services Section 17C Agreements) (Miscellaneous Amendments) (Scotland) Regulations 2023

Type of Instrument: Negative

Laid Date: 5 October 2023

Meeting Date: 7 November 2023

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 [24 October 2023](#) and made no recommendations in relation to this instrument.

Reporting deadline: 27 November 2023

Purpose

11. The purpose of the instrument is to amend the National Health Service (General Medical Services Contracts) (Scotland) Regulations 2018 and the National Health Service (Primary Medical Services Section 17C Agreements) (Scotland) Regulations 2018 to enable prisoners to apply to register with a GP prior to their release from a custodial setting.

12. The policy note states that the current regulations enable GPs to refuse an application to join a practice from a prospective patient if that patient does not live in the GP practice area. The effect of this for prisoners means that they are unable to register with a GP until after their release from custody, which can present delays to registration and access to healthcare.

13. It further states that allowing prisoners to apply to register with a GP in the community prior to their release safeguards continuity of care during the early stages of their rehabilitation.

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

POLICY NOTE**THE NATIONAL HEALTH SERVICE (GENERAL MEDICAL SERVICES CONTRACTS AND PRIMARY MEDICAL SERVICES SECTION 17C AGREEMENTS) (MISCELLANEOUS AMENDMENTS) (SCOTLAND) REGULATIONS 2023****SSI 2023/281**

The above instrument was made in exercise of the powers conferred by sections 17E, 17N, and 105(7) of the National Health Service (Scotland) Act 1978 and all other powers enabling them to do so. The instrument is subject to negative procedure.

Purpose of the instrument.

To amend the National Health Service (General Medical Services Contracts) (Scotland) Regulations 2018 and the National Health Service (Primary Medical Services Section 17C Agreements) (Scotland) Regulations 2018 (“the Contract and Agreement Regulations 2018”) to enable prisoners to apply to register with a GP prior to their release from a custodial setting.

Policy Objectives

At present the Contract and Agreement Regulations 2018 enable GPs to refuse an application to join a practice from a prospective patient if that patient does not live in the GP practice area. The effect of this for prisoners means that they are unable to register with a GP until after their release from custody. which can present delays to registration and access to healthcare.

It is recognised that allowing prisoners to apply to register with a GP in the community prior to their release safeguards continuity of care during the early stages of their rehabilitation.

Such a move would build on work undertaken during 2018 to clarify the patient registration process to ensure that it is being conducted fairly and equitably for all patients, including people recently liberated from prison. It would also address the recommendation in the Health and Sport Committee on Healthcare in Prisons (published 10 May 2018) on the need to ensure prisoners were registered with a GP surgery after their release.

Release from prison is a challenging time for prisoners. Uncertainties at the time of release, for example regarding future home address, can make communication between integrated and community healthcare services more difficult. Problems arising upon release from prisons include prisoners leaving without sufficient quantities or with the wrong medication, without being registered with a GP in the

community, and without an assessment of their social care needs, despite receiving care in prisons.

The amendments in the Regulations will ensure that a prisoner who will live in the GPs catchment area on release cannot be refused from applying to register. The Scottish Government will provide guidance on the registration of prisoners to support practices in this respect.

In addition the regulations make a minor amendment to the Contract Regulations to remove a redundant interpretation provision.

EU Alignment Consideration

Following research in to EU legislation regarding patient registration for primary care services and the release of persons from a custodial setting, it has been concluded that there are no considerations in respect of EU alignment in relation to this change.

Consultation

A scoping exercise was undertaken in 2019 with a wide range of stakeholders including the British Medical Association (BMA), Royal College of General Practitioners (RCGP), Healthcare Improvement Scotland (HIS), the Scottish Prison Service (SPS), Social Work Scotland and Voluntary Health Scotland, with feedback overwhelmingly positive.

The 2018 Scottish general and primary medical services contracts (which the Contract and Agreement Regulations 2018 underpin by setting out required contractual terms) was developed collaboratively through negotiation between the Scottish Government and Scottish General Practice Committee of the British Medical Association (the "SGPC"), as the parties authorised to negotiate the general medical services contract and primary medical services agreement in Scotland.

Impact Assessments

A Child Rights Wellbeing Impact Assessment was completed and is attached. It has found that this will have a positive contribution to the wellbeing of children and young people in Scotland.

An Equality Impact Assessment, encompassing health equalities, and child rights and welfare has been completed on the policy and is attached. It has found that as the Regulations are intended to apply equally to all those affected by its provisions: the policy will not have a detrimental effect on people with protected characteristics or people within other assessed populations, such as those living in rural areas or areas of deprivation, on the basis of that characteristic.

In terms of SEA and the Scottish Government's statutory obligations under the Environmental Assessment (Scotland) Act 2005 ("the 2005 Act"), it is considered that the Regulations and wider policy are likely to have no or minimal effects on the environment and can be exempted under Section 7 of the 2005 Act. A pre-screening notification was therefore submitted to the Consultation Authorities (SNH, SEPA and Historic Environment Scotland), and added to the SEA Database. As the Regulations implement that wider policy, no further assessment has been required.

Financial Effects

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

Scottish Government
Primary Care Directorate
October 2023