

DELEGATED POWERS AND LAW REFORM COMMITTEE

10th Meeting, 2022 (Session 6) Tuesday 22 March 2022

Instrument Responses

Coronavirus Act 2020 (Transitional Provision) (Scotland) Regulations 2022 (SSI 2022/82)

On 9 March 2022, the Scottish Government was asked:

Section 4 and schedule 3 of the Coronavirus Act 2020 amended the National Health Service (Primary Medical Services Performers Lists) (Scotland) Regulations 2004 (S.S.I. 2004/114) (“the 2004 Regulations”). Paragraph 1(2) of schedule 3 of the 2020 Act inserts regulation 3A into the 2004 Regulations. Regulation 3A provides, amongst other things, general medical practitioners can begin providing primary medical services while their applications to join a Health Board’s Performers Lists are still pending. We note this was an emergency measure made in response to the Covid-19 pandemic. Prior to the passing of the 2020 Act, under regulation 3 practitioners could not provide primary medical services while their application was pending (subject to the exceptions in regulation 3(2A) and (3)).

By virtue of section 89 of the 2020 Act, the amendments made by section 4 and schedule 4 will cease to have effect on 24 March 2022. SSI 2022/82 inserts a new regulation 5A, 6A & 7A into the 2004 Regulations, making transitional provision in response to the expiry of the 2020 Act.

As a consequence of regulation 6A practitioners must confirm that they wish to proceed with an application, when required by a Health Board to do so. Regulation 7A thereafter provides:

“On the expiry of the period referred to in paragraph (6A), the Health Board shall again consider the application and notify the applicant and any relevant Health Board of its determination and the reasons for it (including any facts relied on), and where the Health Board refuses the application for inclusion, of the applicant’s right to appeal under regulation 13 (appeal to the Scottish Ministers).”

1. We note the amendments made by SSI 2022/82 do not extend the application of regulation 3A to enable practitioners to continue providing primary medical services while their application under regulation 6A is being considered. Please confirm it is the policy intention that practitioners whose applications are still pending on 24 March 2022 will have to stop providing primary medical services until their applications have been determined.
2. On our reading, regulation 7A would require a Health Board to consider and determine an applicant’s application immediately following the expiry of the period in regulation 6A. Please confirm if regulation 7A is intended to place such a requirement on Health Boards.
3. If not, please confirm what corrective action is proposed and by when.

On 14 March 2022, the Scottish Government responded:

We note that the National Health Service (Primary Medical Services Performers Lists) (Scotland) Regulations 2004 (the “2004 Regulations”) do not contain a regulation 6A. The Scottish Government understands the Committee to be asking about the effect of paragraph (6A) of regulation 7 which SSI 2022/82 inserts into the 2004 Regulations.

We can confirm that regulation 3A, which allows general practitioners to provide primary medical services without having been included on a Health Board Performers List, will expire at the end of the day on 24 March 2022. We note that regulation 3A only applies to those general practitioners whose application for inclusion in a Health Board Performers List “has not been refused or deferred under regulation 7 or 7B”.

Inserted regulation 7(6A) only applies to those general practitioners whose application was deferred under 7B(4). This category of practitioner could not have benefited from regulation 3A as their application has been deferred under regulation 7B. There should therefore be no practitioners who are currently providing primary medical services in reliance on regulation 3A to whom inserted regulation 7(6A) applies.

For completeness: we can confirm that it is the policy intention of the Scottish Government that regulation 3A should expire at the end of the day on 24 March 2022. Those practitioners who have benefited from regulation 3A, which as noted does not include the group to which inserted regulation 7(6A) applies, will have to stop providing primary medical services until their application is determined. The Scottish Government notes that this restores the pre-coronavirus functioning of the 2004 Regulations which provide that, subject to a small number of exceptions, no general practitioner may provide primary medical services unless their name is included on a Performers List (see regulation 3).

We note that there is no regulation 6A in the 2004 Regulations and that regulation 7A deals with the effect of corresponding decisions in England, Wales and Northern Ireland. The Scottish Government understands the Committee to be asking about the combined effect of paragraphs (6A) and (7A) of regulation 7, both of which are inserted by SSI 2022/82.

The Scottish Government does not agree that effect of inserted regulation 7(7A) is to require the Health Board to consider and determine the application immediately upon the expiry of the period stated by inserted regulation 7(6A). The Scottish Government consider that the effect of inserted regulation 7(7A) is to provide that the Health Board must not consider or determine the application until the time period allowed for the applicant to provide further comments or material has expired. The Scottish Government does not consider that this imposes an implied time limit on the Health Board to immediately consider and determine the application. In the absence of a specified time limit the Health Board would be required to discharge this within a reasonable timeframe.

For the reasons outlined above, the Scottish Government does not propose any corrective action in this case.