

# Health, Social Care and Sport Committee

## 22<sup>nd</sup> Meeting, 2023 (Session 6), Tuesday, 20 June 2023

### Subordinate legislation

### Note by the clerk

#### Purpose

1. This paper invites the Committee to consider the following negative instruments:
  - [The Food \(Scotland\) Act 2015 \(Compliance Notices\) Regulations 2023](#)
  - [The National Health Service \(Charges to Overseas Visitors\) \(Scotland\) Amendment 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 these instruments.

### **Clerks to the Committee**

**15 June 2023**

**SSI 2023/161**

**Title of Instrument:** The Food (Scotland) Act 2015 (Compliance Notices) Regulations 2023

**Type of Instrument:** Negative

**Laid Date:** 25 May 2023

**Meeting Date:** 20 June 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?** Yes

10. The Delegated Powers and Law Reform Committee considered the instrument at its meeting on [13 June 2023](#) and draws the instrument to the attention of the Parliament under the general reporting ground for a cross-referencing error. Paragraph 33 of the schedule should refer to regulation 4 of the Novel Foods (Scotland) Regulations 2017 instead of regulation 6(2). The Committee also noted that the Scottish Government intends to correct this error by amendment at the earliest available opportunity.

**Reporting deadline:** 4 September 2023

### **Purpose**

11. The purpose of the instrument is to list offences in relation to which Compliance Notices, as set out in the Food (Scotland) Act 2015, may be used as an alternative to criminal proceedings.

12. The relevant offences relate to food information, food composition standards, novel foods, foods for specific groups and food contact materials.

13. The policy note states that Compliance Notices are already in use for breaches of food hygiene regulations. This instrument will expand the range of food law offences for which a Compliance Notice can be issued.

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

**SSI 2023/173**

**Title of Instrument:** The National Health Service (Charges to Overseas Visitors) (Scotland) Amendment Regulations 2023

**Type of Instrument:** Negative

**Laid Date:** 2 June 2023

**Meeting Date:** 20 June 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

15. The Delegated Powers and Law Reform Committee considered the instrument at its meeting on [13 June 2023](#) and made no recommendations in relation to this instrument.

**Reporting deadline:** 11 September 2023

**Purpose**

16. The purpose of the instrument is to ensure overseas visitors from certain British Overseas Territories will not be charged for certain treatment provided by Health Boards in Scotland, in accordance with healthcare agreements.

17. The policy note states that the UK Government has had longstanding reciprocal healthcare agreements with most of the British Overseas Territories, and has now entered into healthcare agreements with a further five territories: Ascension Island, Bermuda, Cayman Islands, Pitcairn, Henderson, Ducie and Oeno Islands and Tristan da Cunha. The instrument inserts these five territories into schedule 2 of the National Health Service (Charges to Overseas Visitors) (Scotland) Regulations 1989.

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

**POLICY NOTE****THE FOOD (SCOTLAND) ACT 2015 (COMPLIANCE NOTICES) REGULATIONS 2023****SSI 2023/161****1. Description**

The above instrument is made by the Scottish Ministers in exercise of the powers conferred by sections 49(1) and (2)(c) and 52 of the Food (Scotland) Act 2015 and all other powers enabling them to do so. This instrument is subject to the negative procedure.

**2. Policy Objective**

The main purpose of The Food (Scotland) Act 2015 (Compliance Notices) Regulations 2023 is to list offences in relation to which Compliance Notices, as set out in the Food (Scotland) Act 2015, may be used as an alternative to criminal proceedings. The relevant offences relate to food information, food composition standards, novel foods, foods for specific groups and food contact materials.

**3. Policy Background**

Part 3 of the Food (Scotland) Act 2015 makes provision for the use of Compliance Notices as an alternative to criminal proceedings in relation to relevant offences. Currently, under food law, in relation to the offences listed in the instrument, authorised officers (AOs) can seize and detain certain food products or report the offence to the Procurator Fiscal. There is a gap in enforcement powers in relation to less serious, technical breaches of the law, which could be dealt with effectively in an alternative way. Being able to issue Compliance Notices to food business operators would allow AOs to take a flexible, graduated and proportionate approach to enforcing breaches of relevant food law.

The introduction of Compliance Notices in relation to addressing breaches of relevant food law regulations that are listed in the instrument will provide AOs with a similar enforcement tool to those available in relation to food hygiene requirements. This will allow AOs to apply the same flexible, graduated and proportionate approach to a broader range of food law offences.

The offences in relation to which Compliance Notices will be available are in the following regulations: Quick-frozen Foodstuffs Regulations 1990, Food (Lot Marking) Regulations 1996, Foods Intended for Use in Energy Restricted Diets for Weight Reduction Regulations 1997, Bread and Flour Regulations 1998, Coffee Extracts and Chicory Extracts (Scotland) Regulations 2001, Kava-kava in Food (Scotland) Regulations 2002, Food Supplements (Scotland) Regulations 2003, Cocoa and Chocolate Products (Scotland) Regulations 2003, Condensed Milk and Dried Milk (Scotland) Regulations 2003, Specified Sugar Products (Scotland) Regulations 2003, Processed Cereal-based Foods and Baby Foods for Infants and Young

Children (Scotland) Regulations 2004, Jam and Similar Products (Scotland) Regulations 2004, Genetically Modified Food (Scotland) Regulations 2004, General Food Regulations 2004, Tryptophan in Food (Scotland) Regulations 2005, Addition of Vitamins, Minerals and Other Substances (Scotland) Regulations 2007, Nutrition and Health Claims (Scotland) Regulations 2007, Natural Mineral Water, Spring Water and Bottled Drinking Water (Scotland) (No. 2) Regulations 2007, Specified Products from China (Restriction on First Placing on the Market) (Scotland) Regulations 2008, Food Irradiation (Scotland) Regulations 2009, Food for Particular Nutritional Uses (Addition of Substances for Specific Nutritional Purposes) (Scotland) Regulations 2009, Plastic Kitchenware (Conditions on Imports from China) (Scotland) Regulations 2011, Materials and Articles in Contact with Food (Scotland) Regulations 2012, Fish Labelling (Scotland) Regulations 2013, Food Additives, Flavourings, Enzymes and Extraction Solvents (Scotland) Regulations 2013, Fruit Juices and Fruit Nectars (Scotland) Regulations 2013, Products Containing Meat etc. (Scotland) Regulations 2014, Food Information (Scotland) Regulations 2014, Honey (Scotland) Regulations 2015, Country of Origin of Certain Meats (Scotland) Regulations 2016, Food for Specific Groups (Scotland) Regulations 2016, Caseins and Caseinates (Scotland) (No. 2) Regulations 2016, Novel Foods (Scotland) Regulations 2017 and Food for Specific Groups (Infant Formula and Follow-On Formula) (Scotland) Regulations 2020.

#### **4. Consultation**

A shortened eight-week public consultation was held from 21 October to 16 December 2021 on the proposal to introduce a new Compliance Notice for breaches of food standards. The main aims were to seek the views of food businesses, enforcement authorities, consumers and other stakeholders on the proposal to introduce a Compliance Notice for food standards. The consultation was also used to confirm whether the Compliance Notice would benefit AOs who enforce food law, whether they would help to improve business compliance and to gain an understanding of how they might impact food business and Local Authority resources. The consultation was sent out to all 32 Local Authorities and a wide range of bodies representing the food industry. A total of 20 responses were received.

Compliance Notices were welcomed by the majority of stakeholders with unanimous agreement across all respondents that there is a gap in current food standards enforcement and that a Compliance Notice is a sensible option for addressing this.

#### **5. Other Administrations**

These Regulations extend to Scotland only and follow a comprehensive review of food law legislation. In England, Wales and Northern Ireland, as individual pieces of food standards legislation have been reviewed and amendments considered necessary, improvement notices have been gradually introduced.

#### **6. Guidance**

A Guidance document will be developed to support AOs using Compliance Notices. This has been supported by training that was delivered to AOs in April and further

training will be delivered by FSS following the introduction of the Compliance Notices.

## **7. Impact Assessment**

A final Business and Regulatory Impact Assessment has been prepared following the public consultation and it accompanies this note.

## **8. Regulating small businesses**

This Regulation will apply to all businesses who manufacture and sell food products.

## **9. Monitoring**

Food Standards Scotland will work with Local Authorities where problems or suspected infringements of the legislation arise. The effectiveness of this instrument will be monitored via general feedback from industry, Enforcement Authorities and consumers.

**Contact:** Raymond Pang  
Food Standards Scotland  
Pilgrim House  
Old Ford Road  
Aberdeen AB11 5RL

Tel: 07392 318 229

Email: [Raymond.pang@fss.scot](mailto:Raymond.pang@fss.scot)

**POLICY NOTE****THE NATIONAL HEALTH SERVICE (CHARGES TO OVERSEAS VISITORS)  
(SCOTLAND) AMENDMENT REGULATIONS 2023****SSI 2023/173**

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 certain British Overseas Territories will not be charged for certain treatment provided by Health Boards in Scotland, in accordance with healthcare agreements.

**Policy Objectives**

1. This instrument amends the National Health Service (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.
2. The UK Government have had longstanding reciprocal healthcare agreements with most of the British Overseas Territories – these territories are currently listed in schedule 2 of the 1989 Regulations. Following a review of the Overseas Territories NHS Quota System and other healthcare support available to the British Overseas Territories, the UK Government has now entered into healthcare agreements with a further five territories.
3. 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 Ascension Island, Bermuda, Cayman Islands, Pitcairn, Henderson, Ducie and Oeno Islands and Tristan da Cunha. 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 healthcare agreements between those places and the UK.
4. This instrument amends regulation 5(c) (exemption from charges for treatment the need for which arose during the visit) to reflect that the healthcare agreements between the UK Government and Bermuda, Cayman Islands and Pitcairn, Henderson, Ducie and Oeno Islands do not contain provision for an exemption from charges for treatment the need for which arose during a visit to the UK. The reference to Israel in regulation 5(c) is removed as it is not mentioned in schedule 2.

**Consultation**

5. 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, the Scottish Government will monitor the impact of these amendments on healthcare services.

6. The UK Government laid a similar instrument, amending the English overseas charging regulations, on 9 May 2023. Charging policy for NHS services is a devolved matter, and the Scottish Government is responsible for taking forward any amendments to the 1989 Regulations.

### **Impact Assessments**

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

8. 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 Ascension Island, Bermuda, Cayman Islands, Pitcairn, Henderson, Ducie and Oeno Islands and Tristan da Cunha when providing certain services is removed.

9. The obligation on Health Boards and the providers of certain healthcare services to make and recover charges from overseas visitors from Ascension Island and Tristan da Cunha for services, provided only for the purpose of giving treatment, the need for which arose during a visit, is also removed.

10. 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**

11. The Cabinet Secretary for NHS Recovery, 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**

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

13. John Cameron (email: [john.cameron@gov.scot](mailto:john.cameron@gov.scot)), Planning and Quality Division, Directorate for Healthcare Quality and Improvement, can be contacted with any queries regarding this instrument.

**Scottish Government**  
**Directorate for Healthcare Quality and Improvement**

May 2023