

# Health, Social Care and Sport Committee

## 24th Meeting, 2023 (Session 6), Tuesday, 5 September 2023

### Subordinate legislation

### Note by the clerk

#### Purpose

1. This paper invites the Committee to consider the following negative instrument:
  - [The National Health Service \(Free Prescriptions and Charges for Drugs and Appliances\) \(Scotland\) 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 this instrument.

### **Clerks to the Committee**

**31 August 2023**

**SSI 2023/181**

**Title of Instrument:** The National Health Service (Free Prescriptions and Charges for Drugs and Appliances) (Scotland) Amendment Regulations 2023

**Type of Instrument:** Negative

**Laid Date:** 15 June 2023

**Meeting Date:** 5 September 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 [27 June 2023](#) and made no recommendations in relation to this instrument.

**Reporting deadline:** 25 September 2023

### **Purpose**

11. The purpose of the instrument is to increase the prescription charge applied to English prescription forms presented for dispensing in Scotland by 30 pence, to £9.65 for a single item, and for elastic hosiery to £9.65 for a single item and £19.30 per pair.

12. The policy note states that, under the 2011 regulations, the practice has been to apply the same rate as in England. This update aligns Scottish charges with the English charges, which were increased on 1 April 2023.

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

**POLICY NOTE****THE NATIONAL HEALTH SERVICE (FREE PRESCRIPTIONS AND CHARGES FOR DRUGS AND APPLIANCES) (SCOTLAND) AMENDMENT REGULATIONS 2023****SSI 2023/181**

The above instrument was made in exercise of the powers conferred on Scottish Ministers by sections 69(1) and 105(7) of the National Health Service (Scotland) Act 1978. The instrument is subject to negative procedure.

This instrument amends the National Health Service (Free Prescriptions and Charges for Drugs and Appliances) (Scotland) Regulations 2011 (“the 2011 Regulations”) in respect of prescription charges applied to English prescription forms if presented for dispensing in Scotland.

**Policy Objectives**

The Scottish Government abolished prescription charges in Scotland on 1 April 2011. Practice since then has been to charge the rate applied in England where a patient presents an English prescription form for dispensing in Scotland (unless the patient falls within one of the exemptions found in the 2011 Regulations, including if they are ordinarily resident in Scotland and hold an Entitlement Card issued by a Health Board, in which case no charge will be made).

The National Health Service (Charges for Drugs and Appliances) Regulations 2015, which govern prescription charges in England, have been amended by the National Health Service (Charges for Drugs and Appliances) (Amendment) Regulations 2023 to increase the per item prescription charge in England by 30p from 1 April 2023, raising the charge to £9.65 for a single item, and for elastic hosiery to £9.65 for a single item and £19.30 per pair. These Regulations therefore make amendments to the 2011 Regulations, to increase the amount to be charged in Scotland in respect of an English prescription. This is in alignment with the increased charges in England.

The existing exemption criteria remain unchanged, ensuring current reciprocal arrangements can continue whereby exempt patients presenting Scottish prescription forms in England can collect their medication free of charge and vice versa.

**Impact Assessments**

Impact assessments have not been prepared for this instrument as the amendment is to achieve an update to the prescription charge that has already been applied in England through the National Health Service (Charges for Drugs and Appliances) (Amendment) Regulations 2023. This amendment enables community pharmacies in Scotland to apply the correct charge when dispensing items against an English

prescription form. If this amendment was not brought into force then Scottish pharmacies could only apply the charge that was in force prior to 1 April 2023.

**Financial Effects**

The Minister for Public Health and Women's Health confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Scottish Government  
Chief Medical Officer Directorate  
Pharmacy and Medicines Division  
June 2023