

Health, Social Care and Sport Committee

7th Meeting, 2024 (Session 6), Tuesday, 5 March 2024

Subordinate legislation

Note by the clerk

Purpose

1. This paper invites the Committee to consider the following negative instruments:
 - National Health Service (Optical Charges and Payments and General Ophthalmic Services) (Scotland) Amendment Regulations 2024
 - National Health Service (Common Staffing Method) (Scotland) Regulations 2024
 - Personal Injuries (NHS Charges) (Amounts) (Scotland) Amendment Regulations 2024
 - The Social Care and Social Work Improvement Scotland (Cancellation of Registration and Relevant Requirements) Order 2024

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

29 February 2024

SSI 2024/38

Title of Instrument: National Health Service (Optical Charges and Payments and General Ophthalmic Services (Scotland) Amendment Regulations 2024

Type of Instrument: Negative

Laid Date: 08 February 2024

Meeting Date: 05 March 2024

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 February 2024** and made no recommendations in relation to this instrument.

Reporting deadline: 25 March 2024

Purpose

11. The purpose of the instrument is to increase by an overall of 1.68% the values of NHS optical vouchers accepted or used by a supplier in Scotland on and after 1 April 2024. It also brings into effect various administrative changes relating to the provision of General Ophthalmic Services ("GOS") on and after 1 April 2024.

12. The policy note states that NHS optical vouchers provide financial help towards the purchase of new glasses or contact lenses for eligible persons, including children aged under 16, those aged 16 to 18 in qualifying full-time education, those on a low income and those who require complex lenses. Some people are also eligible to an NHS optical voucher for help with the cost of repairing or replacing glasses or contact lenses

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

SSI 2024/43

Title of Instrument: National Health Service (Common Staffing Method) (Scotland) Regulations 2024

Type of Instrument: Negative

Laid Date: 09 February 2024

Meeting Date: 05 March 2024

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

14. The Delegated Powers and Law Reform Committee considered the instrument at its meeting on **27 February 2024** and made no recommendations in relation to this instrument.

Reporting deadline: 25 March 2024

Purpose

15. The purpose of the instrument is to specify the minimum frequency at which the common staffing method is to be used in relation to specific types of health care, and the staffing level and professional judgement tools that must be used as part of the common staffing method for specified kinds of health care provision.

16. The policy note states that the instrument is required to specify that the common staffing method must be used no less than once annually in relation to certain types of health care. The Regulations also specify the speciality specific staffing level tools and the professional judgement tool that should be used as part of the common staffing method for specified kinds of health care provision. 10 speciality-specific staffing level tools are named in the instrument alongside the particular kind of health care provision for which each tool is to be used.

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

Correspondence

18. The Committee received **correspondence from the RCN** regarding the instrument on 23 February 2024. A SPICe paper setting out these concerns has been included in **Annexe E**.

Post-legislative scrutiny of the Health and Care (Staffing) (Scotland) Act 2019

19. The Committee is currently undertaking post-legislative scrutiny of the Health and Care (Staffing) (Scotland) Act 2019. It wrote to the Cabinet Secretary for NHS Recovery, Health and Social Care on [7 November 2023](#) seeking a written update on various aspects in relation to this legislation. The Committee received a response from the Cabinet Secretary on [19 January 2024](#) and is currently considering its next steps in relation to this scrutiny.

SSI 2024/44

Title of Instrument: Personal Injuries (NHS Charges) (Amounts) (Scotland) Amendment Regulations 2024

Type of Instrument: Negative

Laid Date: 09 February 2024

Meeting Date: 05 March 2024

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

20. The Delegated Powers and Law Reform Committee considered the instrument at its meeting on **27 February 2024** and made no recommendations in relation to this instrument.

Reporting deadline: 25 March 2024

Purpose

21. The purpose of the instrument is to amend the Personal Injuries (NHS Charges) (Amounts) (Scotland) Regulations 2006. The instrument will increase the charges ("NHS charges") recovered from persons who pay compensation ("compensators") in cases where an injured person receives National Health Service hospital treatment or ambulance services. The increase in charges relates to an uplift for Hospital and Community Health Service (HCHS) annual inflation.

22. The policy note states that the instrument will allow for new NHS charges to apply in cases where compensation has been made in respect to incidents occurring on or after 1st April 2024; with NHS charges being revised annually to take account of the Hospital and Community Health Services (HCHS) pay and price inflation. The Scheme is administered on behalf of Scottish Ministers by the Compensation Recovery Unit (CRU) of the Department of Work and Pensions (DWP) in accordance with an agency arrangement under section 93 of the Scotland Act 1998.

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

SSI 2024/45

Title of Instrument: Social Care and Social Work Improvement (Cancellation of Registration and Relevant Requirements) Order 2024

Type of Instrument: Negative

Laid Date: 09 February 2024

Meeting Date: 05 March 2024

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

24. The Delegated Powers and Law Reform Committee considered the instrument at its meeting on **27 February 2024** and made no recommendations in relation to this instrument.

Reporting deadline: 25 March 2024

Purpose

25. The purpose of the instrument is to ensure that the Care Inspectorate (CI) can propose to cancel the registration of a care service under section 64(1) of the Public Services Reform (Scotland) Act 2010 (2010 Act) or report certain local authority provided care services to the Scottish Ministers under section 91(3)(b) of the 2010 Act, following a breach of section 7 and/or 8 of the Health and Care (Staffing) (Scotland) 2019 Act (2019 Act). The 2019 Act comes into force on 1 April 2024.

26. The policy note states that the instrument specifies new grounds on which the Care Inspectorate may propose to cancel the registration of a care service, namely that the service is being, or has at any time been, carried on other than in accordance with section 7 and/or section 8 of the 2019 Act. It also specifies the requirements imposed by sections 7 and 8 of the 2019 Act as relevant requirements for the purposes of section 91(5)(c) of the 2010 Act.

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

POLICY NOTE**THE NATIONAL HEALTH SERVICE (OPTICAL CHARGES AND PAYMENTS AND GENERAL OPHTHALMIC SERVICES) (SCOTLAND) AMENDMENT REGULATIONS 2024****SSI 2024/38**

The above instrument was made in exercise of the powers conferred by sections 26, 70(1), 73(a), 74(a) and 105(7) and paragraphs 2(2) and 2A of schedule 11 of the National Health Service (Scotland) Act 1978. The instrument is subject to negative procedure.

Summary Box

To increase, by an overall of 1.68%, the values of NHS optical vouchers accepted or used by a supplier in Scotland on and after 1 April 2024. To also bring into effect various administrative changes relating to the provision of General Ophthalmic Services (“GOS”) on and after 1 April 2024.

Policy Objectives**NHS optical vouchers - uprating of values**

NHS optical vouchers provide financial help towards the purchase of new glasses or contact lenses for eligible persons, including children aged under 16, those aged 16 to 18 in qualifying full-time education, those on a low income and those who require complex lenses. Some people are also eligible to a NHS optical voucher for help with the cost of repairing or replacing glasses or contact lenses.

The instrument amends the National Health Service (Optical Charges and Payments) (Scotland) Regulations 1998 by increasing the overall values of all NHS optical voucher categories and supplements by 1.68% for NHS optical vouchers that are accepted or used by a supplier in Scotland on or after 1 April 2024.

Removal of patient practice record form

Regulations 22 and 23 of the National Health Service (General Ophthalmic Services) (Scotland) Regulations 2006 (“the 2006 Regulations”) make provision for the requirement for a “patient practice record form” to be completed and signed as part of the process of applying to have a GOS eye examination.

The patient practice record form is the means by which a patient or their representative declares that the patient is eligible to have a GOS eye examination in Scotland. It was introduced in 2016 for the purposes of checking whether a patient is entitled to have a GOS eye examination in Scotland, following the ability of contractors providing GOS in

Scotland to digitally submit their GOS remuneration claims to the Common Services Agency (NHS National Services Scotland)¹.

NHS Scotland Counter Fraud Services has determined that it no longer requires a patient practice record form to be completed for the purposes of checking whether a patient is eligible to have a GOS eye examination. As a consequence, the instrument amends the 2006 Regulations by removing the requirement for a patient practice record form to be completed as part of the process of applying to have a GOS eye examination in Scotland.

Changes to Ophthalmic List removal process and criteria

Regulations 12(2) and 12(3) of the 2006 Regulations provide for the removal of an optometrist or ophthalmic medical practitioner (“OMP”) from a Health Board’s Ophthalmic List, where the Board has determined that the person has not provided GOS in the Board’s area within the preceding 6 months (with respect to persons on the first part of the Ophthalmic List) or 12 months (with respect to persons on the second part of the Ophthalmic List).

As part of its determination process, and before the person can be removed from the Health Board’s Ophthalmic List, the Health Board must consult with its Area Optical Committee (“AOC”) with respect to optometrists, or its Area Medical Committee (“AMC”) with respect to OMPs.

In order to reduce the administrative burden for Health Boards with regards maintaining Ophthalmic Lists, and to ensure more consistency across the arrangements that apply to both parts of the Ophthalmic List, the instrument:

- amends regulations 12(2) and 12(3) of the 2006 Regulations to remove the requirement for a Health Board to consult with its AOC/AMC, prior to removing a person from its Ophthalmic List for not having provided GOS in its area within the period referred to in each of these provisions.
- amends regulation 12(2) to change to 12 months (from 6 months) the time period that applies with respect to how long a Health Board must determine that a person has not provided GOS for in its area, before it removes that person from the first part of its Ophthalmic List.

Removal of requirement for mobile practices to provide Health Boards with advance notice of certain visits to day centres and residential centres

Paragraph 5 of schedule 1 of the 2006 Regulations provides that a GOS contractor that is a mobile practice must give the relevant Health Board notice at least one month in advance of a visit that it intends to make to a day centre or residential centre to provide GOS to three or more persons. In giving that notice, the contractor must also indicate how often it intends to undertake return visits to that location.

¹ [https://www.sehd.scot.nhs.uk/pca/PCA2016\(O\)06.pdf](https://www.sehd.scot.nhs.uk/pca/PCA2016(O)06.pdf)

There is broad consensus amongst Health Boards and the community optometry sector in Scotland that this requirement no longer serves any utility. As such, in order to reduce the administrative burden for Health Boards and contractors, the instrument amends the 2006 Regulations by removing the requirement.

Change to time limit for submitting GOS eye examination fees payment claims

Paragraph 13(1) of schedule 1 of the 2006 Regulations provides that a contractor providing GOS has six months after the date of a GOS eye examination within which to submit their associated claim for payment of fees to the Agency.

In order to align the time limit for submission of GOS claims with that which applies to payment claims for NHS optical vouchers and Community Glaucoma Service assessments, the instrument amends the 2006 Regulations so that the time limit for submitting a GOS claim to the Agency is changed to three months after the date of the eye examination.

EU Alignment Consideration

This instrument is not relevant to the Scottish Government's policy to maintain alignment with the EU.

Consultation

Optometry Scotland and Health Boards have been consulted in advance of the preparation of this instrument. Their views have been factored into the preparation of this instrument.

Impact Assessments

There are no Equalities, Children's Rights and Wellbeing, Island Communities, Socio-economic or Strategic Environmental impact issues arising from this instrument.

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 Directorate
for Primary Care February 2024

POLICY NOTE

**THE NATIONAL HEALTH SERVICE (COMMON STAFFING METHOD) (SCOTLAND)
REGULATIONS 2024**

SSI 2024/43

The above instrument was made in exercise of the powers conferred by sections 12IJ(1) and (3) and 105(7) of the National Health Service (Scotland) Act 1978 (the 1978 Act). The instrument is subject to negative procedure.

Summary Box

This instrument specifies the minimum frequency at which the common staffing method is to be used in relation to specific types of health care, and the staffing level and professional judgement tools that must be used as part of the common staffing method for specified kinds of health care provision.

Policy Objectives

Section 12IJ of the 1978 Act - which is inserted by section 4 of the Health and Care (Staffing) (Scotland) Act 2019 (the 2019 Act) - sets out a duty for Health Boards and the Common Services Agency for the Scottish Health Service (commonly known as NHS NSS) to follow a common staffing method when determining staffing provision for specific types of health care. The duty extends to certain Special Health Boards (NHS 24, the National Waiting Times Centre Board and the State Hospitals for Board for Scotland). These Regulations make provision in relation to the common staffing method.

The common staffing method sets out a process by which a Health Board, NHS NSS or Special Health Board determines the staffing provision required for certain types of health care. It includes the use of speciality-specific staffing level tools and a professional judgement tool, along with consideration of a range of other factors which include among others the local context, patient needs, clinical advice and the different skills and experience of employees.

The instrument specifies that the common staffing method must be used no less than once annually. It is only required to be used in relation to certain types of health care, when that health care is provided in specified locations and by specified types of employees, as listed in section 12IK of the 1978 Act. Those kinds of health care provision are ones where a validated speciality-specific staffing level tool is available, and, at present, do not include any kinds of health care provided by NHS NSS or NHS 24.

The Regulations also specify the speciality-specific staffing level tools and the professional judgement tool that should be used as part of the common staffing method for specified kinds of health care provision. 10 specialty-specific staffing level tools are named in the instrument alongside the particular kind of health care provision for which each tool must be used. A single professional judgement tool is also named, which is to be used for all kinds of health care provision listed in the instrument. It is important to prescribe the minimum frequency of use of the common staffing method and the associated tools that must be used. This will enable consistent application across Scotland, make comparisons easier, and give reassurance that data has been obtained from tools that have undergone

testing and validation. This is consistent with the policy aim of the Act, in enabling a rigorous evidence-based approach to decision-making about staffing.

EU Alignment Consideration

This instrument is not relevant to the Scottish Government's policy to maintain alignment with the EU.

Consultation

Two consultations were carried out during 2017-2018 as part of proposals for the Health and Care (Staffing) (Scotland) Bill, along with a series of stakeholder engagement events across Scotland. Following the passing of the Bill, statutory guidance to support the 2019 Act was prepared by various working groups comprising representatives from the Scottish Government and external stakeholders, including Health Boards, Special Health Boards, NHS NSS, local authorities, integration authorities, Healthcare Improvement Scotland, the Care Inspectorate, professional bodies, trade unions and professional regulatory bodies. This guidance went out to public consultation in June-September 2023 and feedback will be used to revise and finalise the guidance, to be published on 01 April 2024, to coincide with commencement of the 2019 Act.

The Nursing and Midwifery Workload and Workforce Planning Programme (NMWWPP) was established in 2004; part of their remit being to develop workload tools and methodology. Development of each tool involved expert working groups comprising a variety of stakeholders. The staffing level and professional judgement tools specified in this instrument were originally developed through this process, endorsed by the Scottish Executive Nurse Directors and professional bodies, and have been recommended for use since April 2013 (with updates to the tools being made since then as required), albeit on a non-statutory footing. The NMWWPP also developed a triangulation process which illustrated the other information that should be considered alongside the staffing level and professional judgement tools when making decisions about staffing. This process formed the basis of the common staffing method. Healthcare Improvement Scotland is now responsible for continued management and development of the tools and the common staffing method and regularly consults with stakeholders as part of this.

Impact Assessments

Impact assessments were carried out as part of the Parliamentary passage of the Health and Care (Staffing) (Scotland) Bill and it was considered that no further impact assessments were necessary in relation to these Regulations.

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.

The staffing level and professional judgement tools have been recommended for use since 2013, and, along with the common staffing method, were being used regularly in many Health Boards prior to the pandemic. Following remobilisation of 2019 Act

implementation, Health Boards have put plans in place to run the tools and use the common staffing method. The review process following use of the common staffing method sits within established governance processes within Health Boards. There should therefore be no significant impact as a direct consequence of mandating their continued use through legislation.

Scottish Government
Chief Nursing Officers Directorate February
2024

POLICY NOTE

THE PERSONAL INJURIES (NHS CHARGES) (AMOUNTS) (SCOTLAND) AMENDMENT REGULATIONS 2024

SSI 2024/44

1. The above instrument was made in exercise of the powers conferred by sections 153(2) and (5), 163(1) and 195(1) and (2) of the Health and Social Care (Community Health and Standards Act 2003 (“the 2003 Act”). The instrument is subject to negative resolution procedure.

Purpose of the Instrument

These regulations amend the Personal Injuries (NHS Charges) (Amounts) (Scotland) Regulations 2006. The purpose of the instrument is to increase the charges (“NHS charges”) recovered from persons who pay compensation (“compensators”) in cases where an injured person receives National Health Service hospital treatment or ambulance services. The increase in charges relates to an uplift for Hospital and Community Health Service (HCHS) annual inflation.

Policy Objectives

2. The new NHS charges will apply in cases where compensation has been made in respect of incidents occurring on or after 1st April 2024. The NHS charges will be increased as follows:

	Rate	
	Current	From 1 April 2024
Where the injured person was provided with NHS ambulance services for the purpose of taking him/her to a hospital for NHS treatment (for each journey)	£243	£249
Where the injured person received NHS treatment at a hospital in respect of his/her injury but was not admitted to hospital (flat rate)	£806	£825
Where the injured person received NHS treatment at a hospital in respect of his/her injury and was admitted to hospital (daily rate)	£991	£1,014
The cap (being the maximum amount that will be claimed from a compensator) in any one case.	£59,248	£60,610

3. The NHS charges are revised annually to take account of Hospital and Community Health Services (HCHS) pay and price inflation. The latest estimate for HCHS inflation is 2.3%.

4. The Scheme is administered on behalf of Scottish Ministers by the Compensation Recovery Unit (CRU) of the Department of Work and Pensions (DWP) in accordance with an agency arrangement under section 93 of the Scotland Act 1998.

EU Alignment Consideration

5. This instrument is not relevant to the Scottish Government's policy to maintain alignment with the EU.

Consultation

6. It was not necessary to consult specifically on this instrument. For more than 70 years, hospitals have been able to recover the costs of treating the victims of road traffic accidents where the injured person has made a successful claim for personal injury compensation. The arrangements for this were streamlined and modernised through the provisions of the Road Traffic (NHS Charges) Act 1999 (RTA). The Scheme introduced in January 2007 to replace the RTA Scheme has been the subject of a number of consultation exercises.

7. The Law Commission for England and Wales consulted in 1996 on whether the recovery of NHS costs should take place not just following road traffic accidents but in all cases where people claim and receive personal injury compensation. More than three quarters of the people who responded to the consultation agreed with the Commission's view that the NHS should be able to recover its costs from the liable party and that the NHS, and therefore the taxpayer should not have to pay for the treatment of such patients. Rather, those causing injury to others should pay the full cost of their actions, including the costs of NHS treatment.

8. The then Scottish Executive Health Department and the Department of Health undertook parallel consultation exercises on how such an expanded Scheme might operate in the autumn of 2002. The responses in the main supported the Scheme and proposals for its administration. There were some concerns, however, about whether the Employers' Liability Compulsory Insurance (ELCI) market was sufficiently robust to cope with the expansion.

9. Following on from the consultation the necessary legislative framework was put in place as Part 3 of the 2003 Act. However, in response to the concerns expressed, Scottish and UK Ministers committed to not implementing the expanded Scheme until a study of the ELCI market, carried out by DWP during 2003, was published. The study's final report, issued in December 2003, recommended that implementation of the NHS Cost Recovery Scheme should be postponed for a year, and this recommendation was accepted.

10. A further consultation was undertaken at the end of 2004 covering in detail the draft Regulations that would govern the Scheme. There are three sets of principal regulations:

The Personal Injuries (NHS Charges) (Amounts) (Scotland) Regulations 2006, which these regulations amend;

The Personal Injuries (NHS Charges) (General) (Scotland) Regulations 2006;

The Personal Injuries (NHS Charges) (Reviews and Appeals) (Scotland) Regulations 2006.

11. The consultation included seeking agreement to continue the practice established under the old RTA Scheme of automatically uprating the level of charges each year in line with HCHS inflation. The proposal was agreed by the majority of respondents.

12. The consultation raised further concerns about the planned timing for introducing the Scheme as the ECLI market was still considered fragile. After further discussions with DWP, Scottish and UK Ministers agreed to one further postponement of implementation of the Scheme from April 2005 to January 2007.

13. The following bodies were consulted in both the 2002 and 2004 consultations:

NHS Boards (and NHS Trusts)
 Scottish NHS Confederation
 The Law Society of Scotland
 The Scottish Law Agents Society
 The Faculty of Actuaries
 Motor Insurers Bureau Scotland
 Patients Association
 Scottish Association of Health Councils
 The Faculty of Advocates
 The Scottish Consumer Council
 Association of British Insurers
 Various Insurance Bodies

Impact Assessments

14. A full Impact Assessment (IA) has not been prepared for this instrument, as the impact on business, charities or voluntary bodies is negligible. There is no expansion or reduction in the level of regulatory activity as a consequence of this instrument. The scheme is already in place, there is no change in policy and the uplift to the tariff (being based on HCHS inflation) was agreed with the insurance industry as part of the consultation process in 2006. This process for uprating the tariff of charges is a longstanding annual event that simply maintains the real-terms values of the funds recovered by the NHS.

15. The bulk of the NHS charges are covered by insurance, and will be paid by insurers in addition to the personal compensation payment which the injured person will have secured. It is possible that insurers will choose to pass the increased costs on to their customers through insurance premiums.

16. Any impact on premiums due to this uplift is likely to be negligible. The £4m estimated additional income for the NHS can be broken down as £2.69m for road traffic accidents and £1.32m for non-road traffic accidents (using rounded figures). The additional income is estimated using this years figures but based on the previous years data.

17. If we assume the £2.69m for road traffic accidents is spread evenly among all holders of compulsory motor insurance, then the average cost per policy could rise by 0.02% or around 17p per policy. These figures are calculated using 2023 estimates for net motor premiums of £14bn and estimated average annual expenditure per household buying motor insurance in 2024/25 of £873 based on information provided by the Association of British Insurers.

18. The remaining £1.32m is likely to be a cost pressure on public liability and employer insurance. If this cost was transferred to the population, for e.g. by lower wages - to cover the increase in employer insurance contributions, and increased tax – to cover the public liability insurance, it would cost around 4p per person.

Financial Effects

19. No Business and Regulatory Impact Assessment (BRIA) is necessary as the instrument has negligible financial effects on the Scottish Government, local government or on business. Furthermore, it should be noted that the liability for charges rests with the compensator, and not with the person who has been compensated.

20. The 2003 Act provides for a parallel Scheme to be operated in England and Wales by the Secretary of State for Health and Social Care and identical changes to the flat/daily rate and the cap have been made in England and Wales by the Department of Health and Social Care. The England and Wales Scheme is also administered by the Compensation Recovery Unit.

**Scottish Government Health and Social Care Directorate
January 2024**

ANNEXE D

POLICY NOTE

**THE SOCIAL CARE AND SOCIAL WORK IMPROVEMENT SCOTLAND
(CANCELLATION OF REGISTRATION AND RELEVANT REQUIREMENTS)
ORDER 2024****SSI 2024/45**

The above instrument was made in exercise of the powers conferred by sections 64(1)(c) and 91(5)(c) of the Public Services Reform (Scotland) Act 2010. The instrument is subject to negative procedure.

Summary Box

This instrument ensures that the Care Inspectorate (CI) can propose to cancel the registration of a care service under section 64(1) of the Public Services Reform (Scotland) Act 2010 (2010 Act) or report certain local authority provided care services to the Scottish Ministers under section 91(3)(b) of the 2010 Act, following a breach of section 7 and/ or 8 of the Health and Care (Staffing) (Scotland) 2019 Act (2019 Act). The 2019 Act comes into force on 1 April 2024.

Policy Objectives

Social Care and Social Work Improvement Scotland, commonly known as the CI, has statutory responsibility for, among other things, the registration and inspection of care services in Scotland. Requirements on care service providers in relation to appropriate staffing levels and staff training are currently set out in regulation 15 of the Social Care and Social Work Improvement Scotland (Requirements for Care Services) Regulations 2011 (2011 Regulations). In the event of a breach of regulation 15, the CI may give the care service provider an improvement notice. That notice would provide that unless there is a particular significant improvement in the provision of that service, within a certain time period, the CI intends to make a proposal under section 64(1) of the 2010 Act to cancel the registration of the care service, or, in the case of a care service registered under Chapter 4 of Part 5 of the 2010 Act (which provides for the registration of certain services that are provided by local authorities), to make a report to the Scottish Ministers under section 91 of the 2010 Act. Section 92 allows the Scottish Ministers to exercise certain powers (on receipt of a report under section 91 or otherwise) if they are satisfied that such a service has not been carried on, without reasonable excuse, in accordance with relevant requirements.

In such circumstances, the proposal to cancel the registration under section 64(1) would be on the ground set out in paragraph (b) of that section, namely that the service is being, or has at any time been, carried on other than in accordance with the relevant requirements. Relevant requirements is defined in section 64(3).

In relation to care services registered under Chapter 4 of Part 5 of the 2010 Act, in such circumstances, the CI would report to the Scottish Ministers on the basis that it appears to them that that service is being, or has at any time been, carried on

other than in accordance with the relevant requirements. Relevant requirements is defined in section 91(5) for the purposes of both sections 91(3)(b) and 92. A breach of regulation 15 of the 2011 Regulations falls within the definitions in each of sections 64(3) and 91(5).

Sections 7 and 8 of the 2019 Act will, from 1 April 2024, replace regulation 15 of the 2011 Regulations. Sections 7 and 8, however, do not fall within the definition of relevant requirements in either section 64(3) or section 91(5) of the 2010 Act. The CI could not, without more, propose to cancel the registration of a care service under section 64(1) on the basis of a breach of section 7 and/or 8, or, in the case of care services which are registered under Chapter 4 of Part 5 of the 2010 Act, make a report to the Scottish Ministers under section 91.

This instrument specifies, for the purposes of section 64(1)(c) of the 2010 Act, new grounds on which the CI may propose to cancel the registration of a care service, namely that the service is being, or has at any time been, carried on other than in accordance with section 7 and/or section 8 of the 2019 Act. It also specifies the requirements imposed by sections 7 and 8 of the 2019 Act as relevant requirements for the purposes of section 91(5)(c) of the 2010 Act.

EU Alignment Consideration

This instrument is not relevant to the Scottish Government's policy to maintain alignment with the EU.

Consultation

Consultation was carried out with stakeholders during the parliamentary passage of the Health and Care (Staffing) (Scotland) Bill. More recently, working groups were formed to develop draft statutory guidance, including representatives from health boards, local authorities, integration authorities, Healthcare Improvement Scotland, the CI, professional bodies, trade unions and professional regulatory bodies. A public consultation exercise has also now been carried out around the statutory guidance to accompany the 2019 Act. On the basis that the instrument makes provision to ensure the continuity of CI enforcement powers following commencement of the 2019 Act, no further consultation is required.

Impact Assessments

Impact assessments were submitted as part of the Bill process for the 2019 Act. On the basis that the instrument makes provision to ensure continuity of CI enforcement powers following the commencement of the 2019 Act, no further impact assessments have been undertaken.

Financial Effects

The Minister for Social Care, Mental Wellbeing and Sport 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 Nursing Officer's Directorate
January 2024

The logo for SPICe, featuring the text 'SPICe' in a white, sans-serif font on a dark purple background.

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Health, Social Care and Sport Committee

7th Meeting, 2024 (Session 6), Tuesday, 5 March 2024

The NHS (Common Staffing Method) (Scotland) Regulations 2024

Introduction

This paper provides a brief outline of the Health and Care (Staffing) (Scotland) Act 2019, and, in particular the Common Staffing Method (workforce planning tools). It also provides a summary of the issues raised by the Royal College of Nursing (RCN) with the Scottish Statutory Instrument: [NHS \(Common Staffing Method\) \(Scotland\) Regulations 2024](#). This will hopefully assist Members in their consideration of the Instrument.

Background

The [Health and Care \(Staffing\) \(Scotland\) Bill](#) was introduced in the Scottish Parliament on 23 May 2018 by the then Cabinet Secretary for Health and Sport, Shona Robison. The Bill covers staff planning in health and social care services, with the aim that staffing in both sectors is organised and planned to ensure appropriate staff are put in place by providers of care, to deliver safe and high-quality care.

There is a [SPICe briefing on the Bill](#) as introduced, and as it was [at the end of Stage 2](#).

Workforce planning tools

The Act covers nursing settings where [workforce planning tools](#) have been in place for many years. From 2004, a set of 12 workforce planning tools for nursing and midwifery were developed, as part of the methodology Health Boards use to decide, on an annual basis, the staff establishment - how many staff are required - for most nursing settings. The tools are based on an average workload for each specialty

across Scotland, and are supplemented, in a triangulated approach, by considering the specifics of local context, quality measures and professional judgement. Health Boards were instructed to use the tools and methodology from 2013.

An expert group, the [Nursing and Midwifery Taskforce](#) chaired by the Health Secretary, and including the RCN, was established in February 2023 with a remit to take forward the implementation of the Act, as well as other matters relating to the professions. Minutes are available from an [initial meeting in April 2023](#).

[A recently updated publication on the Act](#) provides some information on the Act and details the main workstreams preparing for implementation.

RCN concerns with the instrument

The instrument contains a Schedule which describes each tool and the setting it applies to, along with a column stating the precise version of the tool that is to be used. The RCN believes that, by making reference to specific versions, work underway with NHS Healthcare Improvement Scotland and Scottish Government officials to address issues they have identified with certain of these tools (notably, the Adult Inpatient Tool and the Professional Judgement Tool) will be rendered pointless, and tools that are not fit for purpose will be stipulated.

The RCN state that they have met with NHS Healthcare Improvement Scotland (HIS) and officials within the Scottish Government Chief Nursing Directorate to discuss their concerns.

They believe that removing the references to specific versions at this stage would allow the work to be concluded, and would allow a more 'responsive' approach to tool development that wouldn't require secondary legislation each time tools are updated

The RCN state in their [letter to the Committee](#) dated 23 February 2024 that they have become aware of issues with the calculators within the tools, stating they are flawed and undermine the process of safe establishment calculations. The result, they say, is that the number of staff required in various settings is quite significantly understated.

RCN suggestions for resolution

The RCN:

“believe it would be preferable for the regulations to refer to the tools by name and not by version. This would negate the need to update the regulations each time the tools are changed or updated”.

SPICe has approached Scottish Government officials tasked with implementation to ask about the concerns raised and how they might be addressed.

In their response to SPICe, the Scottish Government state they have been in dialogue with both RCN and Healthcare Improvement Scotland (HIS) on the matters raised and

considered the information presented by RCN to substantiate it and define the process required to resolve any issues.

The Scottish Government has highlighted to SPICe that the 2024 Regulations prescribe the specific version of each tool that must be used. They state that, where a replacement version of a tool is recommended by HIS, the 2019 Act requires that the new version is prescribed in regulations.

The Scottish Government has stated this means the current tool in place will always be identified in the regulations, ensuring that those required to use the prescribed tool can easily locate it, and have certainty that they are using the correct tool.

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