

SL(6)230 – The National Health Service (Charges to Overseas Visitors) (Amendment) (No. 3) (Wales) Regulations 2022

Background and Purpose

These Regulations amend the National Health Service (Charges to Overseas Visitors) Regulations 1989 ("the principal Regulations"), which provide for the making and recovery of charges for relevant services provided under the National Health Service (Wales) Act 2006 to overseas visitors.

Regulation 2 amends the principal Regulations to insert "Monkeypox" into Schedule 1 (diseases for the treatment of which no charge is to be made). Regulation 2(2)(b) provides that charges incurred in respect of services provided to an overseas visitor for the treatment of monkeypox on or after 23 May 2022 but before these Regulations came into force -

- if not yet made, must not be made,
- if made, must not be recovered, or
- if paid, must be repaid.

Procedure

Negative

The Regulations were made by the Welsh Ministers before they were laid before the Senedd. The Senedd can annul the Regulations within 40 days (excluding any days when the Senedd is: (i) dissolved, or (ii) in recess for more than four days) of the date they were laid before the Senedd.

Technical Scrutiny

The following point is identified for reporting under Standing Order 21.2 in respect of this instrument.

1. Standing Order 21.2(iv) – that it appears to have retrospective effect where the authorising enactment does not give express authority for this.

We note Regulation 2(2)(b) states that "*Services provided to an overseas visitor for the treatment of monkeypox on or after 23 May 2022 but before this paragraph came into force are to be treated for the purposes of these Regulations as if, at the time that the services were provided, they were relevant services in respect of which no charge may be made or recovered.*"



This provision appears to have retrospective effect where the authorising enactment (National Health Service (Wales) Act 2006) does not give express authority for this. Could the Welsh Government provide an explanation?

Merits Scrutiny

The following points are identified for reporting under Standing Order 21.3 in respect of this instrument.

2. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd.

We note the breach of the 21-day convention (i.e. the convention that 21 days should pass between the date a “made negative” instrument is laid before the Senedd and the date the instrument comes into force), and the explanation for the breach provided by Eluned Morgan MS, Minister for Health and Social Services in a letter to the Llywydd dated 29 June 2022.

In particular, we note the following part of the letter:

“The 2022 Regulations were made and laid as soon as practicable to enable monkeypox to be included in the list of diseases in Schedule 1 which are exempt from NHS charge (where treatment is necessary to protect the wider public health).

If the 21 day convention is adhered to, there is a risk (as has been identified by DHSC in respect of its legislation in England) that overseas visitors will be deterred from presenting for treatment due to charging concerns and thereby become a public health risk to the wider community.

Not adhering to the 21 day convention allows the 2022 Regulations to come into force as early as practicable, thereby minimising the risk to wider public health.”

3. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd.

We note there has been no formal consultation on these Regulations. In particular, we note the following paragraph in the Explanatory Memorandum:

“It is considered that the proposed amendments do not require consultation as they are an urgent amendment to the Principal Regulations to protect the wider public health by including monkeypox as a disease, services for the treatment of which is exempt from NHS charges for overseas visitors and thereby ensuring that the risk to public health from infected visitors is minimised.”

4. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd.

We note that a regulatory impact assessment has not been prepared on these Regulations. In particular, we note the following paragraph in the Explanatory Memorandum:



"A regulatory impact assessment has not been prepared in relation to these Regulations due to the need to put them in place urgently to respond to the current outbreak of monkeypox in the UK."

5. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd.

Standing Order 15.4 requires all laid documents to be bilingual *"so far as is appropriate in the circumstances and reasonably practicable."* We note that the Explanatory Memorandum is not available in Welsh. Could the Welsh Government provide an explanation?

Welsh Government response

Technical Scrutiny point 1

Regulation 2(2)(b) effectively provides that charges incurred in respect of services provided to an overseas visitor for the treatment of monkeypox on or after 23 May 2022 but before these Regulations came into force must not be made, or if made must not be recovered, or if paid must be repaid. Therefore, the provisions remove liability and confer a benefit on overseas visitors that have already received treatment for monkeypox. Accordingly, given that that these provisions do not create an unfair result, it is considered that these provisions can be retrospective without offending rule of law principles.

Merit Scrutiny point 5

The Welsh Government is committed to increasing the number of Explanatory Memoranda and Regulatory Impact Assessments for Statutory Instruments that are laid bilingually in the Senedd.

Standing Order 15.4 of the Senedd requires all documents to be laid bilingually where reasonably practicable, and Standard 47 of the Welsh Language Standards (the statutory duties imposed on the Welsh Government by the Welsh Language Commissioner) requires us to consider the subject matter and the anticipated audience of certain documents to prioritise their translation. Under guidance provided by the Commissioner's office (in their Code of Practice on the Welsh Language Standards (No. 1) Regulations 2015), in prioritising these documents for translation at this time we considered issues such as whether the Regulations related to issues affecting the Welsh language directly, whether the Regulations were of great interest to Welsh speaking groups in particular, and whether a high proportion of the documents' audience would be Welsh speaking. As these Regulations are anticipated to affect only a small percentage of overseas visitors accessing NHS services for the diagnosis and treatment of monkeypox, they have not been deemed a priority for translation at this time.

Committee Consideration

The Committee considered the instrument and Welsh Government response at its meeting on 11 July 2022 and reports to the Senedd in line with the reporting points above.



Senedd Cymru
Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad
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Welsh Parliament
Legislation, Justice and Constitution Committee