

SL(6)437 – The National Health Service (General Medical Services Contracts) (Wales) (Amendment) Regulations 2023

Background and Purpose

The Regulations amend the National Health Service (General Medical Services Contracts) Regulations 2023 (“the Principal Regulations”). The Committee considered the Principal Regulations at its meeting of 25 September 2023. The Regulations have been made to correct errors of a technical nature, or which are related to drafting convention, which were identified by the Committee in its report on the Principal Regulations.

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 eight points are identified for reporting under Standing Order 21.2 in respect of this instrument.

1. Standing Order 21.2(vii) – that there appear to be inconsistencies between the meaning of its English and Welsh texts

Regulation 4(a) inserts a definition of “authorised person” into the Principal Regulations. The English text of the definition cross-refers to persons captured by regulation **62(a) to (d)** of the Pharmaceutical Regulations, while the Welsh text cross-refers to persons captured by regulation **62(a) to (c)** of the Pharmaceutical Regulations. It is unclear which version is correct, meaning that the definition of “authorised person” is unclear.

2. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements

Regulation 4(a) inserts a definition of “the Health and Care Professions Council” into the Principal Regulations. This definition makes reference to “article 5(1) of the Health Professions Order 2001 (registration)”. The bracketed word should read “establishment and maintenance of register” as this is the title of article 5 of the Health Professions Order 2001. Article 9 is entitled “registration”.



3. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements

Regulation 4(m)(i) amends the definition of “national disqualification” in the Principal Regulations by replacing the word “sections” with “section”. This is unnecessary as even as amended, the wording of the definition still refers to multiple sections.

4. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements

Regulation 16(b)(viii) states that the “(c.14)” citation should be inserted after “Social Security Act 1998” in Schedule 1 to the Principal Regulations. The Social Security Act 1998 appears twice in Schedule 1, therefore regulation 16(b)(viii) should specify whether the citation is to be inserted on the first occasion or on each occasion that it occurs.

5. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements

Regulation 16(b)(xii) inserts c.22 as the citation for the Reserve Forces (Safeguard of Employment) Act 1985. The correct citation is c.17. Similarly, regulation 16(b)(xv) inserts c.28 as the citation for the Local Government Finance Act 1992. The correct citation is c.14.

6. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements

Regulation 18(r) substitutes the word “paragraph” with “sub-paragraph” in paragraph 66(1) of Schedule 3 to the Principal Regulations. However, the word “paragraph” appears three times in paragraph 66(1) and the amendment does not specify that it is only to apply to the first occasion upon which “paragraph” occurs. Although the other two uses of the word are in sub-paragraphs, they still form part of paragraph 66(1) and therefore it should have been made clear that the amendment only applies to the first occasion upon which “paragraph” appears. This would be consistent with the approach taken in regulation 18(ff).

7. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements

Reporting point 40 in our report on the Principal Regulations drew attention to the fact that a Fitness to Practice Panel is now known as a Medical Practitioners Tribunal. Regulation 18(nn)(ii)(cc) amends paragraph 117(6)(a) of Schedule 3 to the Principal Regulations to reflect this change, however the term “Fitness to Practice” also appears in paragraph 117(6)(b) of the Principal Regulations and the Regulations do not amend this wording.

8. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements

Regulation 18(oo)(iii)(aa) inserts wording into paragraph 119(3)(v) of Schedule 3 to the Principal Regulations. As amended, the wording of paragraph 119(3)(v) would read “in a case where the contract is with two or more individuals practising in partnership or with a company



and one or more of those individuals has refused to comply with a request by the Local Health Board to be medically examined" (added words shown in italics). It is not clear whether the added wording is intended to relate to the partnership, the company or both. If it is just intended to relate to the partnership then the new wording should have been added after the word "partnership" rather than "company". If it is intended to relate to the company or both the partnership and the company, then it would be necessary to clarify who in the company would constitute "the individuals".

Merits Scrutiny

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

9. 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

In its response to our report on the Principal Regulations, the Welsh Government confirmed that it would make amendments to correct the issues raised in points 8 and 54 of our report. Point 8 related to a reference to a repealed provision in the definition of "optometrist independent prescriber" in the Principal Regulations and point 54 noted an incorrect reference to the National Health Service Act 2006 in the Explanatory Note to the Principal Regulations. The Regulations do not make these amendments.

10. 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

The Committee notes that no consultation took place in relation to these Regulations. The Explanatory Memorandum notes:

No consultation has been undertaken on the amendment Regulations as the amendments being made do not alter or have any impact on the policy or how it is applied.

Welsh Government response

A Welsh Government response is required to all but the final reporting point.

Committee Consideration

The Committee considered the instrument at its meeting on 22 January 2024 and reports to the Senedd in line with the reporting points above.

