HEALTH AND SPORT COMMITTEE

AGENDA

17th Meeting, 2019 (Session 5)

Tuesday 25 June 2019

The Committee will meet at 10.00 am in the James Clerk Maxwell Room (CR4).

1. **Subordinate legislation:** The Committee will consider the following negative instrument—

   The National Assistance (Assessment of Resources) Amendment (Scotland) (No. 2) Regulations 2019 (SSI 2019/171).

2. **Scrutiny of NHS Boards - NHS Fife:** The Committee will take evidence from—

   Rt Hon Tricia Marwick, Chair, Paul Hawkins, Chief Executive, Michael Kellet, Director of Health and Social Care, Carol Potter, Director of Finance and Performance, Barbara Anne Nelson, Director of Workforce, and Chris McKenna, Medical Director, NHS Fife.

3. **Scrutiny of NHS Boards - NHS Fife (in private):** The Committee will consider the evidence heard earlier in the meeting.


5. **Primary Care Inquiry (in private):** The Committee will consider a draft report on phase one of the primary care inquiry "What does Primary Care look like for the next generation?".

6. **Primary Care Inquiry (in private):** The Committee will consider its approach to phase two of the primary care inquiry "What does Primary Care look like for the next generation?".

7. **Medicines Inquiry (in private):** The Committee will consider its approach to the inquiry.
8. **Sports Inquiry (in private):** The Committee will consider its approach to the inquiry.

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The papers for this meeting are as follows—

**Agenda item 1**

Note by the Clerk  
HS/S5/19/17/1

**Agenda item 2**

PRIVATE PAPER  
HS/S5/19/17/2 (P)

*NHS Fife written submission*  
HS/S5/19/17/3

**Agenda item 4**

PRIVATE PAPER  
HS/S5/19/17/4 (P)

**Agenda item 5**

PRIVATE PAPER  
HS/S5/19/17/5 (P)

**Agenda item 6, 7 and 8**

PRIVATE PAPER  
HS/S5/19/17/6 (P)
Health and Sport Committee

17th Meeting, 2019 (Session 5)

Tuesday 25 June 2019

Negative Subordinate Legislation

Note by the clerk

Overview of instrument

1. There is one negative instrument for consideration at today’s meeting:

   - National Assistance (Assessment of Resources) Amendment (Scotland) (No. 2) Regulations 2019

Background

2. The Deputy First Minister of Scotland made a statement to Parliament on 23 October 2018 in which he committed to establish a financial redress scheme for survivors of child abuse in care in Scotland. The Advance Payment Scheme comes ahead of planned legislation for a statutory redress scheme, which the Scottish Government intends will pass its final Parliamentary stages before March 2021. It was recommended that advance payments are made as soon as possible to survivors who may not live long enough to apply to the statutory scheme due to either ill health or age. The Advance Payment Scheme therefore opened on 25 April 2019 for those who are aged 70 or over, or who have a terminal illness and are survivors of childhood abuse in care in Scotland before December 2004.

3. The purpose of this instrument is to disregard a payment from the Advance Payment Scheme in respect of cases of historical child abuse in care within the National Assistance (Assessment of Resources) Regulations 1992. This will ensure that payments made by the Scottish Government via this scheme are not taken into consideration by local authorities when carrying out a financial assessment for social care charges for those residing in a care home. Only those who are aged 70 or over or who are terminally ill and have experienced abuse while in care in Scotland before December 2004 are eligible to apply for a payment under the Advance Payment Scheme.

4. These Regulations amend the National Assistance (Assessment of Resources) Regulations 1992 (SI 1992/2977) (“the principal Regulations”). The principal Regulations concern the assessment of the ability of a person to pay for accommodation provided under the Social Work (Scotland) Act 1968 (“the 1968 Act”). By virtue of section 87(3) of the 1968 Act, accommodation provided under the 1968 Act or section 25 of the Mental Health (Care and Treatment) (Scotland) Act 2003 is to be regarded as accommodation provided under Part III of the National Assistance Act 1948.
5. Regulation 2 amends schedule 4 of the principal Regulations to provide that an ex gratia discretionary payment made to a resident in terms of the Advance Payment Scheme for historical child abuse in care cases shall be disregarded as capital in the financial assessment of the resident’s resources.

6. Given that the scheme is already taking applications, and the intended beneficiaries are older or have a terminal illness, it is intended to make the necessary changes to legislation, as soon as possible. This will be achieved by using the minimum required time for laying of a Scottish Statutory Instrument (SSI), being 28 days as set out in section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010. The regulations are due to come into force on 28 June 2019.

**The Policy Note for the instrument is attached at Annex A.**

7. An electronic copy of the instrument is available at:


8. An Equality Impact Assessment has been completed for these Amendment Regulations and is available at:


9. A Business and Regulatory Impact Assessment has been completed for these Amendment Regulations and is available at:


10. The Cabinet Secretary for Health and Sport has confirmed by approving a BRIA stating that this amendment to the National Assistance (Assessment of Resources) Regulations 1992 does not bring any significant additional costs to Scottish Government, Local Government or individuals.

11. There has been no motion to annul this instrument.

12. **Delegated Powers and Law Reform Committee consideration**

   The Delegated Powers and Law Reform Committee considered the instrument at its meeting on 18 June 2019 and did not need to draw attention of the Parliament to this instrument on any grounds within its remit.
The above instrument was made in exercise of the powers conferred by section 22(5) of the National Assistance Act 1948. The instrument is subject to negative procedure and will come into force on 28 June 2019.

Purpose of the instrument.

To disregard a payment from the Advance Payment Scheme in respect of cases of historical child abuse in care within the National Assistance (Assessment of Resources) Regulations 1992. This will ensure that payments made by the Scottish Government via this scheme are not taken into consideration by local authorities when carrying out a financial assessment for social care charges for those residing in a care home. Only those who are aged 70 or over or who are terminally ill and have experienced abuse while in care in Scotland before December 2004 are eligible to apply for a payment under the Advance Payment Scheme.

Policy Objectives

Advance Payment Scheme in respect of cases of historical child abuse in care

The 1992 Regulations set out a number of different types of capital that are to be disregarded when a local authority assesses a resident’s capital for the purpose of charging for residential care. The Advance Payment Scheme in respect of historical child abuse in care opened on 25 April 2019. It is essential that the Regulations incorporate the disregard of these payments. This will ensure these payments are not taken into consideration by local authorities when carrying out financial assessments for social care charges, for those residing in a care home. Individuals who are aged 70 or over or who are terminally ill are eligible to apply for these payments.

Consultation

Both COSLA and Charging for Residential Accommodation Guidance working group members have been consulted about the proposed amendment to the National Assistance (Assessment of Resources) Regulations 1992 and have raised no concerns.

Impact Assessments
A BRIA and EQIA have both been completed and approved by the Cabinet Secretary for Health and Sport and the Deputy Director of Care, Support and Rights respectively.

The following action is being taken as a result of the payments under the Advance Payment Scheme being made directly to the applicant from the Scottish Government.

Financial Effects

The Cabinet Secretary for Health and Sport has confirmed by approving a BRIA stating that this amendment to the National Assistance (Assessment of Resources) Regulations 1992 does not bring any significant additional costs to Scottish Government, Local Government or individuals.

Scottish Government
Health and Social Care Integration
Care, Support and Rights Division

May 2019