

Health, Social Care and Sport Committee

27th Meeting, 2023 (Session 6), Tuesday, 26 September 2023

Subordinate legislation

Note by the clerk

Purpose

1. This paper invites the Committee to consider the following negative instruments:
 - [The National Health Service Pension Schemes \(Remediable Service\) \(Scotland\) Regulations 2023](#)
 - [The Sports Grounds and Sporting Events \(Designation\) \(Scotland\) Amendment Order 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 these instruments.

Clerks to the Committee

22 September 2023

SSI 2023/246

Title of Instrument: The National Health Service Pension Schemes (Remediable Service) (Scotland) Regulations 2023

Type of Instrument: Negative

Laid Date: 5 September 2023

Meeting Date: 26 September 2023

Minister to attend meeting: No

Motion for annulment lodged: No

Reporting deadline: 23 October 2023

Purpose

10. The purpose of the instrument is to implement the remedy to the reforms to the NHS pension scheme in Scotland under the Public Service Pensions and Judicial Offices Act 2022 in respect of pensions for NHS workers in Scotland.
11. The policy note states that the Act requires schemes to make provision in regulations to deliver aspects of the remedy to address the impact of the rollback to the legacy scheme and to allow members to make a choice about their pension benefits for the period between 1 April 2015 and 31 March 2022.
12. A copy of the Scottish Government's Policy Note is included at **Annexe A**.

Drawn to the Parliament's attention by the Delegated Powers and Law Reform Committee? Yes

13. The Delegated Powers and Law Reform Committee considered the instrument at its meeting on [19 September 2023](#) and draws the instrument to the attention of the Parliament. Extracts from the Committee's report are included at **Annexe B**.
14. The Committee draws the instrument to the attention of the Parliament under reporting ground (j) for failure to comply with the laying requirements in section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010. A copy of the letter from the SPPA to the Presiding Officer detailing reasons for the breach is included at **Annexe C**.
15. The Committee also draws the instrument to the attention of the Parliament on the general reporting ground, in respect of:
 - in regulation 5(4), the incorrect cross-reference to regulation 3(4);
 - in regulation 7(2)(a), the incorrect cross reference to 8(2)(b)(ii); and
 - in regulation 18(12)(b) the omitted cross reference to paragraph 5(a).

16. The Committee notes that the Scottish Government proposes to address these matters in the next amending instrument.

SSI 2023/257

Title of Instrument: The Sports Grounds and Sporting Events (Designation) (Scotland) Amendment Order 2023

Type of Instrument: Negative

Laid Date: 11 September 2023

Meeting Date: 26 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

17. The Delegated Powers and Law Reform Committee considered the instrument at its meeting on [19 September 2023](#) and made no recommendations in relation to this instrument.

Reporting deadline: 5 November 2023

Purpose

18. The purpose of the instrument is to update the Sports Grounds and Sporting Events (Designation) (Scotland) Order 2014, which designated sports grounds, the classes of sporting events played at those grounds and the classes of sporting events outside Great Britain for the purposes of Part II of the Criminal Law (Consolidation) (Scotland) Act 1995.

19. The policy note states that these changes are required in light of promotions to and relegation from the Scottish football pyramid and to ensure consistency of approach over the application of the alcohol and other controls framework set out in Part II of the 1995 Act.

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

POLICY NOTE**THE NATIONAL HEALTH SERVICE PENSION SCHEMES (REMEDIABLE SERVICE) (SCOTLAND) REGULATIONS 2023****SSI 2023/246**

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 10 and 12 of the Superannuation Act 1972 (“the 1972 Act”), sections 1(1) and (2)(e), 2(1) (together with paragraph 5(b) of Schedule 2) and 3(1) and (2)(c) of the Public Service Pensions Act 2013 (“the 2013 Act”), and sections 5(1) and (5), 6(1), 7(3), 8, 10(1) and (4), 11(1) and (5), 12(1) and (3), 18, 19(1), (4) and (5), 20, 21, 23(1), 24(1), 25(1) and (4), 26(1) and (2)(a), 29(1), (7) and (8), 31(2) and (3), 37(2) and 108(1) of the Public Service Pensions and Judicial Offices Act 2022 (“PSPJOA 2022”). The instrument is subject to negative procedure.

In accordance with section 10(1) of the 1972 Act and section 3(5) of the 2013 Act, these Regulations are made with the consent of the Treasury.

This Instrument implements the remedy to the reforms to the NHS pension scheme in Scotland under the Public Service Pensions and Judicial Offices Act 2022 (“the PSPJOA 2022”) in respect of pensions for NHS workers in Scotland. The PSPJOA 2022 requires schemes to make provision in regulations to deliver aspects of the remedy to address the impact of the rollback to the legacy scheme and to allow members to make a choice about their pension benefits for the period between 1 April 2015 and 31 March 2022.

Policy Objectives

Occupational pensions policy is reserved to the UK Government with HM Treasury the department responsible for public service pension policy. The 2013 Act introduced reforms to public service pension schemes including those in devolved nations. The aim of the reforms was to implement the recommendations of the Independent Public Service Pensions Commission: Final Report, to make public service pensions, which due to increased workforce longevity had increasingly been paid for by taxpayers, more affordable and sustainable. New pension schemes were introduced from 1 April 2015, characterised through a higher normal pension age (NPA) for all scheme members, calculating benefits on a career average revalued earnings (CARE) basis rather than through final salary, and the introduction of a cost control mechanism.

Transitional protection provided for some scheme members, dependent on proximity to their NPA on 31 March 2012, to be either “fully protected” or “taper protected”. Members in these categories were allowed to remain in their legacy scheme

permanently, or for a set period before transitioning to the reformed CARE scheme before 31 March 2022.

In 2018, following a successful challenge by members of the judicial and firefighters' pension schemes, the transitional protections were found to be discriminatory against younger members by the Court of Appeal, as protection was only offered to older scheme members.

The UK government accepted this ruling had implications for all public service schemes that contained similar transitional protection arrangements and introduced legislation through the 2022 Act to remedy the discrimination caused by these transitional protections.

Through implementing the PSPJOA 2022, the purpose of this instrument is to complete the statutory arrangements of the 2015 as set out in the Act. References are made within the instrument to The Public Service Pensions (Exercise of Powers, Compensation and information) Directions 2022 (PSP Directions 2022). The remedy period is 1 April 2015 to 31 March 2022.

Part 1 details the introductory provisions, including citation, coming into force date and interpretation.

Part 2 makes provision for the adjustment of pension contributions for certain groups of scheme member in circumstances where the contribution amounts due vary between the reformed pension scheme and the legacy pension scheme. This Part also makes provision requiring the scheme manager to provide Remediable Service Statements (RSS) to eligible active, deferred and pensioner members, or the beneficiaries of deceased members. The information contained on the RSS will allow for a member to make an informed choice of which retirement benefits they wish to receive for their remediable service. The timing and frequency of an RSS will depend on whether the member is due to make an immediate choice or a deferred choice. Immediate choice is appropriate to those who are in receipt of pension benefits before the commencement date (1 October 2023) and deferred choice is appropriate to those who retire on or after the commencement date.

Part 3 makes provision for elections. Regulation 7 of Part 3 sets out a framework to determine the eligible decision-maker in circumstances where a member has died before making their choice decision. This defines the circumstances where the eligible decision-maker may be a sole beneficiary such as the surviving adult, who may be the spouse, civil partner or other qualifying surviving partner. In other circumstances there may be multiple beneficiaries therefore the regulation provides a route for the scheme manager to identify who the eligible decision-maker should be. The regulation also confirms that where no eligible decision-maker can be identified then the scheme manager is the decision-maker.

Regulation 8 of Part 3 allows for members who opted out of the pension scheme to make an election for that service to be reinstated. The regulations detail how a member should apply and submit evidence in support of the application within specified timescales. Where an application is accepted, the regulations set out that an RSS will be issued to the member setting out details of any contributions owed

to the scheme to reinstate the service and how they must pay the contributions due (as detailed in Part 8 and 9 of these regulations).

Regulation 9 of Part 3 makes provision for eligible members to be given an immediate choice for reformed scheme or legacy scheme benefits. Where a member has died, the immediate choice should be made by an eligible decision maker, as detailed in Regulation 7 of this Part. Where an immediate choice election has been made, this decision is irrevocable.

Regulations 11 to 13 of Part 3 detail that a deferred choice should be given to eligible active or deferred members at retirement. Where a deferred choice election has been made, this decision is irrevocable.

Where a deferred choice member dies before making a choice, or before benefits begin to be paid, an RSS may be issued to an eligible decision maker to make a deferred choice. Where no choice has been made within the election period, the regulations allow the scheme manager to deem that an election has been made.

Where a deferred choice member retires before the scheme is able to provide an RSS, the regulations allow for the scheme manager to pay legacy scheme benefits in relation to a member's remediable service in the first instance. The member will then be provided with an RSS as soon as is reasonably practicable where they will have a period of 12 months to make a choice.

Part 4 makes provision for those who have elected to pay voluntary contributions to secure additional pension benefits during the remedy period. The scheme manager must determine the value of the pension rights secured through voluntary contributions arrangements as if they were secured in the alternative scheme. Where a member has secured pension rights by way of voluntary contributions to secure reformed scheme flexibilities, the scheme manager must inform the member of their rights to secure those pension rights in the alternative scheme or to extinguish the arrangement and receive compensation for the contributions paid. The provisions in this part also enable a member to retrospectively elect to purchase additional pension under the legacy scheme.

Part 5 makes provision for divorce and dissolution arrangements for both pension sharing agreements and orders, put in place before, on or after the commencement date. The provisions set out that the calculation, or recalculation of a pension debit and the corresponding pension credit must take account of the effect of the remedy.

Part 6 makes provision for transfers in and out of the NHS pension schemes in Scotland that include remediable service on both a cash equivalent basis or a Club basis (transfers between equivalent public service pension schemes). These provisions detail the requirements for the calculation or re-calculation of transfer values and the making and accepting of payments in relation to the transfer value of remediable pension rights.

Where a member has transferred remediable pension right out of either the legacy or reformed scheme, the scheme manager must provide a transfer RSS detailing the value of the transferred-out rights in the alternative scheme.

Part 7 makes provision for certain lifetime allowance and annual allowance charges where the consequences of the remedy lead to a change in a members liability to pay tax on pension benefits. Regulation 58 confirms that where a private sector scheme administrator successfully applies to discharge their liability, the NHS pension scheme administrator will remain jointly liable for any lifetime allowance charge. Regulation 59 requires the scheme manager to accept a scheme pays notice retrospectively if an annual allowance tax charge arises in a remediable tax year as a consequence of the rectification of the pension input period(s) in the remedy period.

Part 8 makes provision about compensation. Specifically when a scheme manager may pay direct or indirect compensation (where benefits are increased rather than members receiving direct compensation).

The provisions set out in Part 9 include the calculation and process of applying interest to relevant amounts owed to and by a person, the netting off of relevant amounts owed to and by a person, and the reduction and waiver of liabilities owed by a member to the scheme.

Provision in Part 10 permits a member of the 1995 section of the legacy scheme who elected to move their previous accrual in that Section to the 2008 Section, before they joined the 2015 scheme to revoke that election with the effect that the member's pensionable service is treated as having always been 1995 section pensionable service.

Part 11 makes provision for circumstances where a member enters into premature retirement and partial retirement, and makes provision about ill-health pensions.

Where a member has or is about to agree to premature retirement in the interests of efficiency, any increase in the employers contribution amount as a consequence of a member choice will be waived by the scheme manager. Where premature retirement is on the grounds of redundancy the scheme manager will, in most cases, not waive the amount of any increase. Instead, the member may opt to pay all or part of the additional contribution due. If the member decides not to pay then the scheme manager must reduce the amount of benefits accordingly. Where the additional contribution is due to be met by the member's employing authority as a consequence of the terms of employment then the scheme manager must waive the additional amount.

Provision in regulations 72 to 73 sets out that a person who has partially retired may elect to adjust the original specified percentage of pension they receive in order to maintain the amount of partial retirement in payment once they have made a choice of remediable benefits.

Regulation 74 covers ill-health retirement and provides that members who have applied for ill-health retirement in relation to their remediable service should have

their applications reassessed against the alternative ill-health retirement criteria that applied at the point of the original application. Regulation 75 makes provision for a member to submit a retrospective ill-health retirement application. Part 12 makes provision for amendments of the principal superannuation scheme 2011 and 2013 regulations, and 2015 Transitional Regulations as detailed in the schedule. The provision in the Schedule ensures that remediable service between 1 April 2015 and 31 March 2022 is always treated as pensionable service in the relevant section of the legacy NHS scheme.

Consultation

In accordance with the requirements of section 21 of the 2013 Act, a public consultation was undertaken from 25 May 2023 and closed on 23 July 2023¹. Five responses, from organisations representing members in the health sector, were received.

Prior to the public consultation a period of informal consultation was carried out from September 2022 to February 2023 with members of the Scottish NHS Pension Scheme Advisory Board (SAB). The SAB is made up of member and employer representatives and provides advice to Scottish Ministers on the NHS Pension Scheme in Scotland.

All five responses to the public consultation agreed that the draft regulations achieved the policy objectives and requirements set by the PSPJOA 2022. A summary of the consultation responses will be made available on the website of the Scottish Public Pensions Agency (SPPA): www.sppa.gov.uk in due course.

Impact Assessments

An equality impact assessment has been carried out for this instrument and can be found on the SPPA's website². An overall assessment was also carried out by the UK government for the Public Service Pensions and Judicial Offices Bill³. The assessment found that offering all eligible members a choice of benefits and removing the transitional protections rectifies the age discrimination that was found by the Court of Appeal. Furthermore, the assessment found that the policy of giving all eligible members a choice of benefits for the remediable period equalised treatment for all members for that period and thus removes any indirect sex discrimination previously found in the transitional protections element of the pension reforms. The assessment found that in relation to the other protected characteristics of disability, religion or belief, sexual orientation, gender reassignment, race/ethnicity, pregnancy and maternity, and marriage and civil partnership there were no findings that showed members to be adversely or otherwise impacted by the remedy.

¹ <https://pensions.gov.scot/nhs/scheme-governance-and-legislation/consultations>

² <https://pensions.gov.scot/nhs/scheme-governance-and-legislation/consultations>

³ https://www.gov.uk/government/consultations/public-service-pension-schemes-consultation-changes-to-the-transitional-arrangements-to-the-2015-schemes?utm_source=6b2b166d-b9a7-4c3c-b015-3a54b30ae67a&utm_medium=email&utm_campaign=govuk-notifications&utm_content=immediate

A Fairer Scotland Duty Assessment was not carried out. The policy set out in this SSI is technical in nature and implements reserved UK legal changes. Accordingly, the Fairer Scotland Duty Assessment is not considered to be applicable here.

Financial Effects

In line with HM Treasury's Statement of Funding Policy, the cost of pensions paid under the Scottish NHS Pension Schemes are managed through UK Government-funded Annually Managed Expenditure (AME), with pensions forecasts submitted to the Office for Budget Responsibility. Financial transactions, both income and expenditure, under these two schemes score as AME; this includes the McCloud corrective payments under the PSPJOA 2022 and these Regulations. On that basis no Business and Regulatory Impact Assessment is required for these Regulations.

In its initial consultation on public service pensions remedy⁴, the UK Government estimated that removing the unlawful discrimination would cost on average around £2.5 billion for each year of the remedy period in additional future pension payments to those eligible members.

This equates to £17 billion across all of the relevant public service schemes. The additional costs for the Scottish NHS schemes, estimated at £400 million⁵, will, in the same way as the other schemes, be factored into future employer contribution rates to apply from 1 April 2024

A full Impact Assessment⁶ was provided for the PSPJOA 2022 which includes detail of the £17 billion estimated cost. These regulations translate the policy requirements of the PSPJOA 2022 in the context of the Scottish NHS pension schemes.

Scottish Public Pensions Agency
An Agency of the Scottish Government
September 2023

⁴ https://www.gov.uk/government/consultations/public-service-pension-schemes-consultation-changes-to-the-transitional-arrangements-to-the-2015-schemes?utm_source=6b2b166d-b9a7-4c3c-b015-3a54b30ae67a&utm_medium=email&utm_campaign=govuk-notifications&utm_content=immediate

⁵

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1069102/Teachers_Scotland_2016_Unpause_Report.pdf

⁶ https://www.legislation.gov.uk/ukpga/2022/7/pdfs/ukpgaod_20220007_en.pdf

Extract from the [Delegated Powers and Law Reform Committee report](#) published on 21 September 2023

National Health Service Pension Schemes (Remediable Service) (Scotland) Regulations 2023 (SSI 2023/246)

61. This instrument is made under powers in the:

- Superannuation Act 1972;
- Public Service Pensions Act 2013; and the
- Public Service Pensions and Judicial Offices Act 2022.

62. The instrument makes changes to the pension schemes of NHS workers in Scotland which are necessary following a successful challenge to police and other public sector pension schemes in the Court of Appeal in 2018.

63. It forms part of a package of measures to address the age discrimination that was identified by the Court in the transitional protections afforded to some scheme members in public service pension schemes.

64. Under section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010, instruments subject to the negative procedure must be laid at least 28 days before they come into force, not counting recess periods of more than 4 days. The instrument breaches this requirement as it was laid on 5 September and comes into force on 1 October 2023.

65. In a letter to the Presiding Officer, the Scottish Public Pensions Agency explained that:

- As public service pensions are reserved to Westminster, legislation for Scotland was contingent on equivalent statutory instruments being introduced by other UK responsible authorities;
- UK Government had to consider the interaction of retrospective changes to pension schemes with pensions taxation legislation. This was extremely complex matter that required changes to the Finance Act 2004 as well as subordinate legislation that came into force in two phases during 2023. This has contributed to delays to the overall remedy policy development for all UK schemes; and
- the instruments were dependent on the completion of the public consultations, which ran variously from May 2023 and until July 2023. As Parliament entered recess before the respective mandatory consultation periods ended in July 2023, there was no opportunity to make these regulations before the recess or lay them before Parliament for the necessary period before the required coming into force date of 1 October 2023.

66. The Committee identified cross referencing errors in relation to:

1. in regulation 5(4), the incorrect cross-reference to regulation 3(4);
2. in regulation 7(2)(a), the incorrect cross reference to 8(2)(b)(ii); and
3. in regulation 18(12)(b) the omitted cross reference to paragraph 5(a).

67. The Scottish Government confirmed it proposes to address these matters in the next amending instrument.

Recommendations from the Delegated Powers and Law Reform Committee report published on 21 September 2023

70. The Committee draws the instrument to the attention of the Parliament under reporting ground (j) for failure to comply with the laying requirements in section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010.

71. The Committee is content with the Scottish Government's explanation provided for this breach of the laying requirements.

72. The Committee also draws the instrument to the attention of the Parliament on the general reporting ground, in respect of:

- in regulation 5(4), the incorrect cross-reference to regulation 3(4);
- in regulation 7(2)(a), the incorrect cross reference to 8(2)(b)(ii); and
- in regulation 18(12)(b) the omitted cross reference to paragraph 5(a).

73. The Committee notes that the Scottish Government proposes to address these matters in the next amending instrument.

Letter from the SPPA to the Presiding Officer, 30 August 2023

Dear Presiding Officer

Public Service Pensions Regulations – the 2015 Remedy

The Firefighters' Pension Scheme (Remediable Service) (Scotland) Regulations 2023

The Police Pensions (Remediable Service) (Scotland) Regulations 2023

The Teachers' Pension Scheme (Transitional Protection Remedy) (Scotland) Regulations 2023

The Local Government Pension Scheme (Scotland) (Transitional Protection Remedy) Regulations 2023

The above named SSIs were made by the Scottish Ministers under section 1 of the Public Service Pensions Act 2013 ("the 2013 Act") on 30 August 2023. They are being laid before the Scottish Parliament on 30 August 2023 and come into force on 1 October 2023.

The National Health Service Pension Schemes (Remediable Service) (Scotland) Regulations 2023

The above named SSI is being made by the Scottish Ministers under section 1 of the Public Service Pensions Act 2013 ("the 2013 Act") on 5 September 2023. It is being laid before the Scottish Parliament on 5 September 2023 and come into force on 1 October 2023.

Section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 sets out that a negative SSI must be laid before the Scottish Parliament at least 28 days before the instrument comes into force. On this occasion, this has not been complied with and to meet the requirements of section 31(3) of that Act, this letter explains why.

These instruments provide the necessary regulations to remove the discrimination identified by the Court of Appeal (known as the McCloud judgment), that was found in the transitional protections in the pension reforms in the 2013 Act. These SSIs represent the second of two pieces of subordinate legislation required for each pension scheme in order to fully remedy the discrimination and are required by the Public Service Pensions and Judicial Offices Act 2022 ("the 2022 Act"), which received Royal Assent on 10 March 2022.

The 2022 Act requires responsible authorities for public service pension schemes – in the case of the executively devolved schemes in Scotland, the Scottish Ministers – to introduce scheme-specific legislation by 1 October 2023. Occupational pensions, including public service pensions, are reserved to Westminster. As such, remedial policy and legislative work to ensure the unlawful discrimination was removed was co-ordinated by HM Treasury and policy and legislation for Scotland was contingent on the coordinated agreement and the consistency with the drafting

of the equivalent statutory instruments being introduced by other UK responsible authorities.

In addition, for 2015 remedy to be delivered required the UK Government to consider the interaction of retrospective changes to pension schemes with the pensions taxation legislation, to ensure individuals would be placed in the correct tax position following 1 October 2023. This was extremely complex matter that required changes to the Finance Act 2004 as well as subordinate legislation that came into force in two phases during 2023. This has contributed to delays to the overall remedy policy development for all UK schemes.

Lastly, the instruments were dependent on the completion of the public consultations, which ran variously from May 2023 and until July 2023. As parliament entered recess before the respective mandatory consultation periods ended in July 2023, there was no opportunity to make these regulations before the recess, or lay them before parliament for the necessary period before the required coming into force date of 1 October 2023.

Consequently I must regrettably inform you that these five instruments will breach the 28 day rule. I can confirm Tom Arthur, Minister for Community Wealth and Public Finance, has written to the Convener of the Delegated Powers and Law Reform Committee and the Minister for Parliamentary Business setting out that it would not be possible to meet the 28 day rule for these regulations.

Yours sincerely

Iain Coltman
SPPA Head of Policy

POLICY NOTE**THE SPORTS GROUNDS AND SPORTING EVENTS (DESIGNATION)
(SCOTLAND) AMENDMENT ORDER 2023****SSI 2023/257**

The above instrument was made in exercise of the powers conferred by section 18 of the Criminal Law (Consolidation) (Scotland) Act 1995. The instrument is subject to negative procedure.

Summary Box

Purpose of the instrument. The Sports Grounds and Sporting Events (Designation) (Scotland) Order 2014 (“the 2014 Order”) designated the sports grounds, the classes of sporting events played at those grounds and the classes of sporting events outside Great Britain for the purposes of Part II of the Criminal Law (Consolidation) (Scotland) Act 1995 (sporting events: control of alcohol etc.).

The 2014 Order needs to be updated to properly reflect the current lists of grounds and events to which the Act should apply.

Policy Objectives

Alcohol and other controls at sporting events were introduced in Scotland in 1980 for reasons of public order and safety. Provision for such controls is currently set out in Part II of the Criminal Law (Consolidation) (Scotland) Act 1995 (“the 1995 Act”).

The principal purpose of the instrument is to update the list of home grounds of Scottish football clubs for the purposes of Schedule 1 of the Sports Grounds and Sporting Events (Designation) (Scotland) Order 2014. These changes are required in light of promotions to and relegation from the Scottish football pyramid and to ensure consistency of approach over the application of the alcohol and other controls framework set out in Part II of the 1995 Act.

Part II of the 1995 Act imposes certain restrictions on the sale and consumption of alcohol at designated grounds for designated sporting events. Designation, as proposed, will mean that it is an offence to:

- be in possession of alcohol or a controlled container in a designated ground for a designated event or attempt to take alcohol in to a designated ground for a designated event*;
- attempt to enter while drunk, or be drunk in, a designated ground at a designated event*;
- carry alcohol or be drunk on a coach or train specifically hired for the carrying of supporters to a designated event at a designated ground.
- drink in corporate areas overlooking the field of play* unless the blinds are

closed or curtains drawn (but does allow, subject to a licence being granted, drinking in hospitality areas in the grounds of the stadium and in stadium car parks).

* During the relevant period of a designated event which is the period commencing two hours before the start and ending one hour after the end of a designated sporting event.

The other controls that are provided for in Part II of the 1995 Act, as part of an overall package, relate to the possession of controlled substances (such as flares or fireworks) and controlled containers (such as bottles).

The opportunity is also taken to amend the name of a number of stadia to reflect their current sponsored name since the last update in 2022.

It is proposed that the football clubs directly affected and other interested parties are notified of the Order when it is laid before Parliament to alert them to the proposed changes and also when the Order clears the Parliamentary process.

Were the 2014 Order not to be updated, the impact would be that it could raise a problem with the application of the legislation as some offences require the accused to have been within a designated sports ground during the period of a designated event, so without the ground being designated, it may be that the offence is not complete.

The Policy objective is therefore to ensure the list of grounds and events reflects the current position to avoid the impact set out above.

EU Alignment Consideration

Alignment is not engaged as this is not covered by EU law.

Consultation

No formal consultation process has taken place with the football clubs as the Order merely seeks to remove 13 entries which need to be omitted and add 9, either to reflect teams new to the football pyramid or changes to stadium names. The clubs are subject to the provisions of Part II of the Criminal Law (Consolidation) (Scotland) Act 1995.

Consultation has taken place with the Scottish Football Association to ensure the list of grounds and events reflects the current position and with both the SFA and Police Scotland on the scope and extent of the list of grounds and events, for examples to include women's football and senior or junior football. The Scottish Government has agreed with both parties that the scope and extent of the list should remain as is currently the case and that the list should simply be updated.

Impact Assessments

A Business and Regulatory Impact Assessment (BRIA) has not been completed on this occasion due to the minimal impact on the football sector and recognition that this is an annual process which is required to reflect promotions and relegations. There are no equality/children's/privacy, etc. impact issues.

Financial Effects

The instrument has no financial effects on the Scottish Government or local government. It may have some effect on the football clubs whose grounds are identified in this Order if they currently permit the sale of alcohol at their grounds from which they receive an income, as the clubs have not previously been subject to the provisions of Part II of the Criminal Law (Consolidation) (Scotland) Act 1995.

Scottish Government
Directorate for Population Health

September 2023