

Health, Social Care and Sport Committee  
Tuesday, 17 February 2026  
8<sup>th</sup> Meeting, 2026 (Session 6)

## Note by the Clerk: Negative instruments – SSI 2026/20 and SSI 2026/23

### Overview

1. At this meeting, the Committee will consider the following Scottish Statutory Instruments (SSIs), which are subject to the negative procedure. The Committee is invited to consider the instruments and decide what, if any, recommendations to make.
2. Further information about each instrument is provided in the Annexes to this paper:
  - Annexe A – [National Health Service \(Functions of the Common Services Agency\) \(Miscellaneous Amendments\) \(Scotland\) Order 2026](#) (SSI 2026/20)
  - Annexe B – [NHS Education for Scotland and Common Services Agency \(Transfer of Staff\) Regulations 2026](#) (SSI 2026/23)

### Procedure

3. Under the negative procedure, an instrument is laid after it is made, and is subject to annulment by resolution of the Parliament for a period of 40 days beginning on the day it is laid.
4. Once laid, the instrument is referred to:
  - the Delegated Powers and Law Reform (DPLR) Committee, for scrutiny on various technical grounds, and
  - a lead committee, whose remit includes the subject-matter of the instrument, for scrutiny on policy grounds.
5. Any MSP may propose, by motion, that the lead committee recommend annulment of the instrument. If such a motion is lodged, it must be debated at a meeting of the Committee, and the Committee must then report to the Parliament (by the advisory deadline referred to above).
6. If there is no motion recommending annulment, the lead committee is not required to report on the instrument.

### Committee consideration

7. So far, no motion recommending annulment of any/either instrument has been lodged.

8. Members are invited to consider each instrument and decide whether there are any points they wish to raise. If there are points to raise on an instrument, options include:
  - seeking further information from the Scottish Government (and/or other stakeholders) through correspondence, and/or
  - inviting the Minister (and/or other stakeholders) to attend the next meeting to give evidence on the instrument.
9. It would then be for the Committee, at its next meeting, to consider any additional information gathered and decide whether to make recommendations in relation to the instrument.
10. If members have no points to raise, the Committee should note the instrument (that is, agree that it has no recommendations to make).
11. However, should a motion recommending annulment of one of the instruments be lodged later in the 40-day period, it may be necessary for the Committee to consider the instrument again.

**Clerks to the Committee**  
**February 2026**

## **Annexe A: National Health Service (Functions of the Common Services Agency) (Miscellaneous Amendments) (Scotland) Order 2026 (SSI 2026/20)**

**Laid under:** [National Health Service \(Scotland\) Act 1978](#)

**Laid on:** 23 January 2026

**Procedure:** Negative

**Deadline for committee consideration:** 2 March 2026 (Advisory deadline for any committee report to be published)

**Deadline for Chamber consideration:** 3 March 2026 (Statutory 40-day deadline for any decision whether to annul the instrument)

**Commencement:** 1 April 2026

### **Delegated Powers and Law Reform Committee consideration**

The DPLR Committee considered the instrument on 10 February 2026 and reported on it in its [17<sup>th</sup> Report, 2026](#). The DPLR Committee drew the instrument to attention of Parliament on the basis that provisions in part 1 of the schedule have been made by what appears to be an unusual or unexpected use of the powers conferred by the parent statute, in the absence of an express power to amend primary legislation and in the absence of a fuller explanation from the Scottish Government.

### **Purpose of the instrument**

This Order dissolves NHS Education for Scotland and transfers functions carried out by that body, as well as its property, rights, liabilities and obligations, to the Common Services Agency for the Scottish Health Service (“the CSA”). The Order amends primary and secondary legislation to remove references to NHS Education for Scotland and, where appropriate, replace them with references to the CSA. The Order also makes transitional provision to ensure that anything done by, or in relation to NHS Education for Scotland, prior to its dissolution on 1 April 2026 will have effect on and after that date as it were done by, or in relation to the CSA.

The Policy Note accompanying the instrument is included in the annexe. It includes a summary of consultation undertaken on the instrument and the anticipated financial effects. The following impact assessments have been carried out:

- [Child Rights and Wellbeing Impact Assessment \(CRWIA\)](#)
- [Equalities Impact Assessment \(EQIA\)](#).

### **Evidence received**

The Committee did not seek written evidence on the regulations but did request sight of the Scottish Government's consultation responses, which are [available online](#). The Scottish Government's consultation ran from 1 October 2025 to 30 November 2025 and received 230 responses.

The Policy note accompanying this instrument (SSI 2026/20) concludes that, out of the total responses received, **60.5%**:

“... agree with the statement that creating a new national organisation to drive forward digital transformation and system change – beginning with the consolidation of NES and NSS into one organisation – is the right approach to deliver the ambitions set out in Scotland's Population Health Framework and Service Renewal Framework, but that there should be no detriment to existing service delivery.”

## **Scottish Government Policy Note**

### **POLICY NOTE**

#### **THE NATIONAL HEALTH SERVICE (FUNCTIONS OF THE COMMON SERVICES AGENCY) (MISCELLANEOUS AMENDMENTS) (SCOTLAND) ORDER 2026**

#### **SSI 2026/20**

The above Order was made in exercise of the powers conferred by sections 2(1)(b), 10(3), and 105(6) and (7), of the National Health Service (Scotland) Act 1978(a), and all other powers enabling them to do so. The instrument is subject to negative procedure.

### **Summary Box**

This Order dissolves NHS Education for Scotland and transfers functions carried out by that body, as well as its property, rights, liabilities and obligations, to the Common Services Agency for the Scottish Health Service (“the CSA”). The Order amends primary and secondary legislation to remove references to NHS Education for Scotland and, where appropriate, replace them with references to the CSA. The Order also makes transitional provision to ensure that anything done by, or in relation to NHS Education for Scotland, prior to its dissolution on 1 April 2026 will have effect on and after that date as it were done by, or in relation to the CSA.

### **Policy Objectives**

The Order amends The National Health Service (Functions of the Common Services Agency) (Scotland) Order 2008 (SSI 2008/312) to transfer functions of NHS Education for Scotland (NES) (a special health board) to the Common Services Agency for the Scottish Health Service (CSA). In addition, the Order transfers the property, rights, liabilities and obligations of NES to the CSA, amends primary and secondary legislation to remove references to NES and, where appropriate, replace those references with references to the CSA, and makes transitional provision in relation to the transfer of functions, property, rights etc from NES to the CSA. The

Order dissolves NES and revokes The NHS Education for Scotland Order 2002 (SSI 2002/103).

This “merger” of NES and the CSA furthers the Scottish Government’s commitment to promoting collaboration across NHS Scotland, enhancing decision-making on health education, workforce planning and service delivery.

It also brings remuneration arrangements for Board Members into line with the arrangements for all other Health Boards, Special Health Boards and Healthcare Improvement Scotland.

### **UN Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 Compatibility**

The Scottish Ministers have made the following statement regarding children’s rights.

In accordance with section 23(2) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 (the Act), the Scottish Ministers certify that, in their view, The National Health Service (Functions of the Common Services Agency) (Miscellaneous Amendments) (Scotland) Order 2026 is compatible with the UNCRC requirements as defined by section 1(2) of the Act.

### **EU Alignment Consideration**

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

### **Consultation**

A public consultation was launched on 1 October 2025 and ran to 30 November 2025 which sought views on the proposals for the initial establishment of a merger between NES and the CSA from April 2026, as well as seeking early input on how, over time, we might build on those strong foundations to deliver transformation as committed to in the Service Renewal Framework.

In total **230** consultation responses were received of which 159 (69.1%) from individuals and 71 (30.9%) from organisations. Initial findings shows that The majority (60.5%) agree with the statement that creating a new national organisation to drive forward digital transformation and system change – beginning with the consolidation of NES and NSS into one organisation – is the right approach to deliver the ambitions set out in Scotland’s Population Health Framework and Service Renewal Framework, but that there should be no detriment to existing service delivery. As a result of that consultation, Ministers are satisfied that this Order can proceed as intended. A full list of those consulted and who agreed to the release of this information will be attached to the consultation report when is published on the Scottish Government website.

### **Impact Assessments**

The Scottish Government has considered a series of impact assessments related to this Order and concluded that only an Equality Impact Assessment and a Child

Rights and Wellbeing Impact Assessment were required. Copies of these impact assessments are provided with this instrument.

Equality Impact Assessment – The Scottish Government is satisfied that there is no clear indication that the proposed Order is likely to have major impacts on groups with protected characteristics. No changes to the Order have therefore been required as a result of the equality impact assessment.

Child Rights and Wellbeing Impact Assessment - The Scottish Government has concluded this Order do not make specific provision with regard to children; it does not impact directly on children, nor does it have any differential impact on children, direct or indirect. It is considered therefore that the overall impact of the Order on children's rights is neutral.

### **Financial Effects**

The Cabinet Secretary for 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.

Scottish Government  
Health Workforce Directorate

January 2026

## **Annexe B: NHS Education for Scotland and Common Services Agency (Transfer of Staff) Regulations 2026 (SSI 2026/23)**

**Laid under:** [National Health Service \(Scotland\) Act 1978](#)

**Laid on:** 23 January 2026

**Procedure:** Negative

**Deadline for committee consideration:** 2 March 2026 (Advisory deadline for any committee report to be published)

**Deadline for Chamber consideration:** 3 March 2026 (Statutory 40-day deadline for any decision whether to annul the instrument)

**Commencement:** 1 April 2026

### **Delegated Powers and Law Reform Committee consideration**

The DPLR Committee considered the instrument on 3<sup>rd</sup> February 2026 and reported on it in its [16<sup>th</sup> Report, 2026](#). The DPLR Committee made no recommendations in relation to the instrument.

### **Purpose of the instrument**

This instrument provides for the transfer of the staff of NHS Education for Scotland from that body to the Common Services Agency (“the CSA”) on 1 April 2026, and for all members of the management committee of the CSA to be entitled to remuneration for their role as members of that committee, other than executive members who are also employees of the CSA.

The Policy Note accompanying the instrument is included in the annexe. It includes a summary of consultation undertaken on the instrument and the anticipated financial effects. The following impact assessments have been carried out:

- [Child Rights and Wellbeing Impact Assessment \(CRWIA\)](#)
- [Equalities Impact Assessment \(EQIA\)](#).

### **Evidence received**

The Committee did not seek written evidence on the instruments but did request sight of the Scottish Government’s consultation responses, which are [available online](#). The Scottish Government’s consultation ran from 1 October 2025 to 30 November 2025 and received 230 responses.

The Policy note accompanying the second negative instrument (SSI 2026/20) concludes that, out of the total responses received, **60.5%**:

“... agree with the statement that creating a new national organisation to drive forward digital transformation and system change – beginning with the consolidation of NES and NSS into one organisation – is the right approach to deliver the ambitions set out in Scotland’s Population Health Framework and Service Renewal Framework, but that there should be no detriment to existing service delivery.”

The Policy Note accompanying this instrument (SSI 2026/23) further indicates that the transfer of staff is being supported by consultation with staff representatives by the respective current employers, that the consultation is due to conclude in early February 2026, and that no material concerns have so far been raised.

## **Scottish Government Policy Note**

### **POLICY NOTE**

#### **THE NHS EDUCATION FOR SCOTLAND AND THE COMMON SERVICES AGENCY (TRANSFER OF STAFF) REGULATIONS 2026**

##### **SSI 2026/23**

The above Regulations were made in exercise of the powers conferred by sections 2(10), 10(2), 105(7), paragraph 7A of schedule 1, and paragraph 3A of schedule 5 of the National Health Service (Scotland) Act 1978<sup>1</sup>, and all other powers enabling them to do so. The instrument is subject to negative procedure.

### **Summary Box**

This instrument provides for the transfer of the staff of NHS Education for Scotland from that body to the Common Services Agency (“the CSA”) on 1 April 2026, and for all members of the management committee of the CSA to be entitled to remuneration for their role as members of that committee, other than executive members who are also employees of the CSA.

### **Policy Objectives**

These Regulations makes provision in consequence of the dissolution of NHS Education for Scotland (“NES”) and the transfer of its functions to the CSA. These Regulations provide for the transfer of the staff of NHS Education for Scotland to the CSA on 1 April 2026. The current contracts of employment of NES’ staff are transferred to the CSA to ensure that NES’ staff terms and conditions of employment remain the same after their transfer to the CSA. In addition, the Regulations amend The Common Services Agency (Membership and Procedure) Regulations 1991 to provide that all members of the management committee of the CSA will be entitled to remuneration for their role as members of that committee, other than executive members who are also CSA employees. This aligns with the Scottish Government’s commitment to promoting collaboration across NHS Scotland, enhancing decision-making on health education, workforce planning and service delivery.

### **UN Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 Compatibility**



The Scottish Ministers have made the following statement regarding children's rights.

In accordance with section 23(2) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 (the Act), the Scottish Ministers certify that, in their view, The NHS Education for Scotland and the Common Services Agency (Transfer of Staff) Regulations 2026 is compatible with the UNCRC requirements as defined by section 1(2) of the Act.

### **EU Alignment Consideration**

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

### **Consultation**

A public consultation was launched on 1 October 2025 and ran to 30 November 2025 which sought views on the proposals for the merger of NES with the CSA from April 2026, as well as seeking early input on how, over time, we might build on those strong foundations to deliver transformation as committed to in the Service Renewal Framework.

The transfer of staff is being supported by consultation with staff representatives by the respective current employers. The consultation is due to conclude in early February, with no material concerns having been raised to date.

### **Impact Assessments**

The Scottish Government has considered a series of impact assessments related to these regulations and concluded that only an Equality Impact Assessment and a Child Rights and Wellbeing Impact Assessment were required. Both impact assessments are provided with this instrument.

Equality Impact Assessment – the Scottish Government is satisfied that there is no clear indication that the proposed regulations are likely to have major impacts on groups with protected characteristics. No changes to the Regulations have therefore been required as a result of the equality impact assessment.

Child Rights and Wellbeing Impact Assessment - the Scottish Government has concluded the Regulations do not make specific provision with regard to children; they do not impact directly on children, nor do they have any differential impact on children, direct or indirect. It is considered therefore that the overall impact of the Regulations on children's rights is neutral.

### **Financial Effects**

The Cabinet Secretary for 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.

Scottish Government

**HSCS/S6/26/8/6**

Health Workforce Directorate

January 2026