

Health, Social Care and Sport Committee

**14th Meeting, 2022 (Session 6), Tuesday
19 April 2022**

Subordinate legislation

Note by the clerk

Purpose

1. This paper invites the Committee to consider the following unrelated negative instruments:
 - [The Sports Grounds and Sporting Events \(Designation\) \(Scotland\) Amendment Order 2022](#)
 - [The National Health Service Pension Schemes \(Scotland\) Amendment Regulations 2022](#)
 - [The National Health Service \(Charges to Overseas Visitors\) \(Scotland\) Amendment Regulations 2022](#)

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

14 April 2022

SSI 2022/86

Title of Instrument: The Sports Grounds and Sporting Events (Designation) (Scotland) Amendment Order 2022

Type of Instrument: Negative

Laid Date: 10 March 2022

Meeting Date: 19 April 2022

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.

10. The Delegated Powers and Law Reform Committee considered the instrument at its meeting on [22 March 2022](#) and made no recommendations in relation to this instrument.

Reporting deadline: 4 May 2022

Purpose

11. 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.).
12. The policy note states the 2014 Order needs to be updated to properly reflect the current lists of grounds and events to which the Act should apply. The 2014 Order also needs to be updated to include football matches in the competition for the UEFA Europa Conference League. The Order will therefore achieve this.
13. A copy of the Scottish Government's Policy Note is included in **Annexe A**. The Business and Regulatory Impact Assessment is included in **Annexe B**.

SSI 2022/100

Title of Instrument: The National Health Service Pension Schemes (Scotland) Amendment Regulations 2022

Type of Instrument: Negative

Laid Date: 17 March 2022

Meeting Date: 19 April 2022

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.

14. The Delegated Powers and Law Reform Committee considered the instrument at its meeting on [29 March 2022](#) and made no recommendations in relation to this instrument.

Reporting deadline: 9 May 2022

Purpose

15. The Regulations implement reforms to the National Health Service Pension Schemes under the Public Service Pensions and Judicial Offices Act ("the 2022 Act") in respect of pensions for NHS workers in Scotland.

16. The purpose of this instrument is to close the legacy scheme at 31 March 2022, moving all active members to the 2015 Scheme on 1 April 2022. The policy note states that it ensures rules around additional pension elections and transfers in to the existing scheme for transitional members are applied consistently to those previously classed as full protection members.

17. A copy of the Scottish Government's Policy Note is included in **Annexe C**.

18. 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. This instrument was laid before the Scottish Parliament on 17 March 2022 and came into force on 1 April 2022. This instrument therefore breaches the 28 day rule. Reasons for this breach are detailed in a letter to the Presiding Officer, attached at **Annexe D**.

SSI 2022/114

Title of Instrument: The National Health Service (Charges to Overseas Visitors) (Scotland) Amendment Regulations 2022

Type of Instrument: Negative

Laid Date: 24 March 2022

Meeting Date: 19 April 2022

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.

19. The Delegated Powers and Law Reform Committee considered the instrument at its meeting on [29 March 2022](#) and made no recommendations in relation to this instrument.

Reporting deadline: 16 May 2022

Purpose

20. This instrument ensures overseas visitors from Ukraine who have been displaced as a result of the ongoing conflict can receive relevant healthcare services, provided by NHS Scotland, at no charge. This may include maternity care, mental health services and treatment for specific conditions.

21. A copy of the Scottish Government's Policy Note is included in **Annexe E**.

22. 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. This instrument was laid before the Scottish Parliament on 24 March 2022 and came into force at 5pm the same day. This instrument therefore breached the 28-day rule. Reasons for this breach are detailed in a letter to the Presiding Officer, attached at **Annexe F**.

Annexe A

POLICY NOTE

**THE SPORTS GROUNDS AND SPORTING EVENTS (DESIGNATION)
(SCOTLAND) AMENDMENT ORDER 2022**

SSI 2022/86

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.

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. The 2014 Order also needs to be updated to include football matches in the competition for the UEFA Europa Conference League. The Order will therefore achieve this.

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 and to include football matches in the competition for the UEFA Europa Conference League which has come into being since the last update in 2014.

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.

Consultation

No formal consultation process has taken place with the football clubs as the Order merely seeks to remove 9 entries which need to be omitted and 14 which require to be added, 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 been completed on the draft SSI and is attached. 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**

March 2022

Annexe B

Final Business and Regulatory Impact Assessment

Title of Legislation:

The Sports Grounds and Sporting Events (Designation) (Scotland) Amendment Order 2022

Purpose and intended effect:

This Business and Regulatory Impact Assessment (“BRIA”) is focused on The Sports Grounds and Sporting Events (Designation) (Scotland) Amendment Order 2022. This BRIA addresses the impact of the Order on football clubs.

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 (“the 2014 Order”). 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.

The order also sets out the cases of events to which it applies. The Order adds football matches in the competition for the UEFA Europa Conference League to the designated classes of sporting events, as this competition has come into being since the 2014 Order.

Policy Objectives:

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.

Introduction

The 2014 Order designates 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 has not been updated since late 2014 and therefore doesn't properly reflect the current lists of grounds and events to which the Act should apply.

The SSI will therefore update the lists of grounds and events to reflect the current position.

Policy Objective

The Policy objective is simply to ensure that the list of grounds and events to which the 2014 Order applies reflects the current position to avoid any problem with the application of the legislation. 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. This issue therefore needs to be addressed.

Current position

The 2014 Order as it stands reflects the grounds and events from 2014. While these are as a whole largely similar to the current position, there are 9 entries which need to be omitted and 14 which require to be added, either to reflect teams new to the football pyramid or changes to stadium names.

The 2014 Order also needs updating to add to the classes of sporting events listed in Schedule 2 the UEFA Europa Conference League, which was only introduced for the 2021-22 season.

Consultation:

Public Consultation: None

Business: No formal consultation process has taken place with the football clubs as the Order merely seeks to remove 9 entries which need to be omitted and 14 which require to be added, either to reflect teams new to the football pyramid or changes to stadium names. The grounds 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.

Options:

This section sets out the range of options that have been considered.

Sectors and groups affected

This SSI will affect those attending football matches in the SPFL, Highland and Lowland leagues in Scotland.

Our approach to assessing options

Within this BRIA we have compared the three approaches of doing nothing, proceeding with the SSI as drafted, and expanding the scope of the SSI to capture additional football grounds and competitions.

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.

The opportunity is also taken to amend the name of a number of stadia to reflect their current sponsored name.

The order also sets out the classes of events to which it applies. The Order adds football matches in the competition for the UEFA Europa Conference League to the designated classes of sporting events, as this competition has come into being since the 2014 Order.

The options are therefore essentially to do nothing whereby the 2014 Order would remain in force, to update the 2014 Order to reflect the current position, or to update the 2014 Order and expand the scope of it to capture additional stadia and competitions.

Option 1: Do nothing

Were we to do nothing, the 2014 order would remain in place. The grounds listed on this order would not reflect the current make-up of the top 5 tiers of men's football in Scotland nor all of the competitions they participate in. It would therefore be the case that in grounds which were not specified in the order, or for matches in the UEFA Conference League which came into being since the 2014 Order, 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 or event being designated, it may be that the offence is not complete.

Option 2: Update the Order as proposed

Updating the Order as proposed ensures the current top five tiers of men's football in Scotland are properly reflected in the Order, maintaining the current scope of the Order and ensuring that the impact of doing nothing, as set out above, is avoided.

Option 3 – Expand the scope of the Order

This would need to be given further consideration. At present it was felt that there was not sufficient evidence to suggest this was required due to the small crowd sizes at women's football and men's football below the fifth tier, nor would Police Scotland generally be in attendance at such games.

Conclusion

In considering the options in consultation with the Scottish FA and Police Scotland, we take the view that updating the order as proposed is both proportionate and necessary.

Scottish Firms Impact Test:

The scope of this order is limited. In most cases the order updates the names of stadia to reflect current sponsors. Four grounds need to be added to the list to reflect clubs which have joined the SPFL or Lowland Leagues since 2014 and one needs to be removed as the club no longer plays in the Lowland league.

Will the policy have an impact on the competitiveness of Scottish companies within the UK, or elsewhere in Europe or the rest of the world?

No

How many businesses and what sectors is it likely to impact on?

The measures outlined within this BRIA cover the 42 clubs in the 4 SPFL divisions, the 18 Highland League clubs and the 18 Lowland League clubs. In most cases the SSI only changes the name of the ground at which they play, either as they have moved to a new stadium or had it renamed. In the case of four clubs, they have joined the 5 tier pyramid system since the 2014 order: Caledonian Braves, Civil Service Strollers, Kelty Hearts and Bonnyrigg Rose. Preston Athletic's ground Pennypit Park is removed from the list as they are no longer in the Lowland League.

What is the likely cost or benefit to business?

There should not be any direct cost. Alcohol and other controls at sporting events were introduced in Scotland in 1980 for reasons of public order and safety. Clubs operating in the Scottish football pyramid should be operating under this requirement in an event.

Competition Assessment:

None

- Will the measure directly or indirectly limit the number or range of suppliers?

No

- Will the measure limit the ability of suppliers to compete?

No

- Will the measure limit suppliers' incentives to compete vigorously?

No

- Will the measure limit the choices and information available to consumers?

No

Consumer Assessment:

The following sets out the Scottish Government's initial view on the impact of the SSI on consumers.

Does the policy affect the quality, availability or price of any goods or services in a market?

No

Does the policy affect the essential services market, such as energy or water?

No

Does the policy involve storage or increased use of consumer data?

No

Does the policy increase opportunities for unscrupulous suppliers to target consumers?

No

Test run of business forms:

N/A

Digital Impact Test:

N/A

Legal Aid Impact Test:

N/A

Enforcement, sanctions and monitoring:

Enforcement will be for Police Scotland.

Implementation and delivery plan and post-implementation review:

Regulations and guidance have been put in place to support the implementation of the measures contained within the Strategic Framework. These Regulations must be reviewed by the Scottish Ministers at least every 21 days.

We continue to speak to and meet with members of the Tenpin Bowling Proprietors Association, and to engage with Scottish Snooker via sportscotland.

Summary and recommendations:

Introduction

This BRIA has examined the impact of the Sports Grounds and Sporting Events (Designation) (Scotland) Amendment Order 2022, which updates the details set out in the 2014 Order.

Background

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 introduced by the Criminal Law (Consolidation)(Scotland) Act 1995.

Options Appraisal

In considering the 3 options of doing nothing, updating the 2014 Order, or updating the 2014 Order with an expanded scope, we are cognisant of the need to reflect changes 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 introduced by the Criminal Law (Consolidation)(Scotland) Act 1995.

Updating the Order as proposed ensures the current top five tiers of men's football in Scotland are properly reflected in the Order, maintaining the current scope of the Order and ensuring that the impact of doing nothing, whereby offences within football grounds may not be complete due to not being designated, is avoided.

Conclusion

This BRIA has set out the impact of updating the 2014 Order to reflect the current position as regards grounds in the top 5 tiers of Scottish football and the relevant competitions.

We take the view that this SSI brings uniformity and consistency to the grounds and competitions to which the Act should apply and does not impact negatively on any clubs.

Declaration and publication

Sign-off for BRIA:

I have read the Business and Regulatory Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the measures set out in the regulations and guidance. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

Signed: Kevin Stewart

Date: 8 March 2022

Minister's name: Kevin Stewart

Minister's title: Minister for Mental Wellbeing and Social Care

Annexe C

POLICY NOTE

The National Health Service Pension Schemes (Scotland) Amendment Regulations 2022**SSI 2022/100**

The above instrument was made in exercise of the powers conferred by section 1(1), (2)(e) 2 and 3 of, and Schedule 3 to, the Public Service Pensions Act 2013 (“the 2013 Act”). It is subject to negative procedure.

The Regulations implement reforms to the National Health Service Pension Schemes under the Public Service Pensions and Judicial Offices Act (“the 2022 Act”) in respect of pensions for NHS workers in Scotland.

Policy Objectives

Occupational pensions policy is reserved to the UK Government. 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.

The purpose of the amendments in this instrument, in implementation of the 2022 Act, is to ensure that the pension schemes governed by the 2011 Regulations (“the 1995 Section”) and the 2013 Regulations (“the 2008 Section”) will, except for limited purposes, be closed to the accrual of pension benefits with effect from 1st April 2022. Any members currently in pensionable service under those pension schemes will, on that date, begin to accrue benefits in the scheme established by the 2015 Regulations.

A further instrument is being prepared that will complete the statutory arrangements as set out in the 2022 Act.

The Amendments

This instrument achieves the purposes of closing the legacy scheme at 31 March 2022, moving all active members to the 2015 Scheme on 1 April 2022 and ensuring that rules around additional pension elections and transfers in to the existing scheme for transitional members are applied consistently to those previously classed as full protection members.

Regulation 1 establishes the title of the Regulations and the commencement date is set at 1 April 2022.

Regulation 2 amends the 2011 Regulations to prevent any further contributions to, or accruals of service within, the 1995 Section. The transitional protections introduced for affected members on 1st April 2015 will only apply in respect of service before 1st April 2022.

Regulation 3 amends the 2013 Regulations for the same purpose and in an equivalent way in relation to members who had been allowed to remain in the 2008 Section after 31st March 2015. In this note, reference to the “legacy scheme” includes the 1995 Section and the 2008 Section. Reference to “the new scheme” is a reference to the pension scheme established by the 2015 Regulations.

Regulation 4 amends the 2015 Regulations so that members of the legacy scheme (other than pensioners) whose accrual of pensionable service ceased in that scheme on 31st March 2022 are eligible to join the new scheme from 1st April 2022.

Regulation 5 amends the Transitional Regulations, which apply to persons who are members of the legacy scheme and the new scheme, as follows:

- a. Paragraphs (2) and (3) amend regulations relating to the setting of contribution rates for the scheme year commencing 1st April 2022.
- b. Paragraph (2) amends the regulation applicable to employed members of the new scheme to provide that where the member’s contribution rate is to be set by reference to that member’s pensionable earnings during a previous scheme year, those earnings can be derived from the member’s service in the legacy scheme.
- c. Paragraph (3) amends the regulation applicable to self-employed practitioners and non-GP providers to provide that where the member’s contribution rate is to be set by reference to that member’s most recently certified or final pensionable earnings, those earnings can be also derived from the member’s service in the legacy scheme.
- d. Paragraph (4) amends the regulation relating to the uprating of the earnings of practitioners who are members of the legacy scheme and the new scheme so

that it applies after such a member joins the new scheme on or after 1st April 2022.

e. Paragraph (5) amends the regulation which provides for members of the 1995 Section to elect to take benefits derived from additional voluntary contributions at their chosen birthday without having to retire so that it also allows for elections by reference to the date on which the member joins the new scheme in circumstances where members have passed or are near to their chosen birthday on that date.

f. Paragraphs (6) and (7) amend the regulations which set out transitional arrangements relating to ill-health benefits to ensure that, in cases where members have submitted an application for ill-health retirement before 1 April 2022, and the application is still in train on that date, legacy members and their dependants are not placed in a less beneficial position than they would have been in had the outcome of their application been determined under legacy scheme criteria and their retirement on ill-health grounds had taken place before the closure of the legacy scheme on 31st March 2022.

g. Paragraph (9)(a) and (b)(ii) adds to the groups of legacy scheme pensioners set out in Schedule 1 so that re-employed pensioners no longer able to accrue benefits in that scheme from 1st April 2022 are eligible to join the new scheme from that date.

h. Paragraph (8) amends the regulation which provides for which of the pensioner groups set out in Schedule 1 are entitled to a lump sum death benefit different from the one otherwise provided to active members of the new scheme by adding the new groups inserted by paragraph (9)(a) and (b)(ii).

Consultation

To comply with the requirements of section 21 of the 2013 Act, a public consultation was undertaken from 22 November 2021 and closed on 16 January 2022. Those consulted were NHS pension scheme members, employers, related trade unions and relevant Scottish and UK Government Departments. Consultation responses showed a general agreement with the purpose and nature of the amendments. Some respondents did not agree with the overall nature of the 2015 Remedy as set out in the primary legislation. Five responses were received to the consultation and a summary of the consultation responses will be made available on the Scottish Public Pensions Agency's website www.sppa.gov.uk.

Impact Assessments

An initial Equality Impact Assessment has been completed and was included with the public consultation. This assessment will continue to be reviewed and updated and a full assessment will be published with the second and final instrument.

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

This policy introduces further reform to the pension scheme for the NHS in Scotland, following court judgment and public consultation. This policy does not impose any additional costs or reduce existing costs for business, third or public sector organisations and on that basis no Business and Regulatory Impact Assessment is required for these Regulations.

Scottish Public Pensions Agency
An Agency of the Scottish Government
17 March 2022

Annexe D

Dear Presiding Officer

Public Service Pensions Regulations – the 2015 Remedy

The Firefighters' Pension Scheme (Scotland) (Amendment) Regulations 2022
The National Health Service Pension Schemes (Amendment) Regulations 2022
The Police Pensions (Amendment) (Scotland) Regulations 2022
The Teachers' Pension Scheme (Scotland) (Amendment) Regulations 2022

The above named SSIs, were made by the Scottish Ministers under section 1 of the Public Service Pensions Act 2013 (“the 2013 Act”) on 17 March 2022. They are being laid before the Scottish Parliament today, 17 March 2022 and come into force on 1 April 2022.

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) that Act, this letter explains why.

These instruments provide the necessary regulations to begin 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 first 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”).

These instruments could not be made and laid sooner because they were dependent on the 2022 Act receiving Royal Assent. This was originally expected to be received on 3 March 2022 however due to unavoidable delay, Royal Assent was received on 10 March 2022.

Chapter 4 of Part 1 of the Act, contains the operative prospective remedy provision necessary to bring to an end the unlawful age discrimination identified in the McCloud judgment.

In particular, section 88(2)(c) of the Act has the effect of closing the legacy public service pension schemes to future accrual after 31st March 2022. These instruments make consequential provision for the relevant pension schemes. This provision must come into force immediately after the legacy pension schemes are closed to future accrual by the Act to ensure legal certainty and fairness. If there is any delay, then there will be a period in which certain members can no longer accrue pension in the legacy scheme but scheme rules would prevent those members from joining the new scheme.

Consequently I must regrettably inform you that these four instruments will breach the 28 day rule. On 8 March 2022, Tom Arthur, Minister for Public Finance, Planning & Community Wealth, wrote to the Convener of the Delegated Powers and Law Reform Committee setting out that it would not be possible to meet the 28 day rule for these regulations. I attach a copy of that letter for information. For further supporting

information, I also attach a copy of a letter sent by HM Treasury Legal Advisors to the Counsel to the Joint Committee on Statutory Instruments, setting out the reasons for breaching their 21 day convention.

Yours sincerely

Iain Coltman
Interim Head of Policy

Annexe E

POLICY NOTE

THE NATIONAL HEALTH SERVICE (CHARGES TO OVERSEAS VISITORS) (SCOTLAND) AMENDMENT REGULATIONS 2022

SSI 2022/114

The above instrument was made in exercise of the powers conferred by sections 98 and 105 of the National Health Service (Scotland) Act 1978. The instrument is subject to negative procedure.

Purpose of the instrument. This instrument ensures overseas visitors from Ukraine who have been displaced as a result of the ongoing conflict can receive relevant healthcare services, provided by NHS Scotland, at no charge. This may include maternity care, mental health services and treatment for specific conditions.

Policy Objectives

1. This instrument amends the NHS (Charges to Overseas Visitors) (Scotland) Regulations 1989 (S.S.I. 1989/364) (the 1989 Regulations). The 1989 Regulations provide for NHS Boards in Scotland to make and recover charges from overseas visitors (anyone not ordinarily resident in the UK) for relevant services provided to them, unless the overseas visitor, or the service which they receive, is covered by one of a number of exemptions.
2. This instrument introduces new regulation 4C, which creates an exemption from the charges for all people who are ordinarily resident in Ukraine and are lawfully present in the UK (“eligible people from Ukraine”). The exemption also applies to those peoples’ spouses, civil partners or children. This approach ensures that the exemption is consistent across the available visa routes. There are a number of routes which such people might rely upon to obtain a visa which will permit them to remain lawfully in the United Kingdom, including visa routes recently announced by the UK Government for those fleeing the conflict in Ukraine.¹ Individuals who come to the UK under those schemes may not be covered by current exemptions and, in the absence of this new exemption, would be charged for the relevant healthcare services provided by NHS Scotland. This exemption will also cover people who are ordinarily resident in Ukraine, were already in the UK on short-term visas when the conflict began, on 24 February 2022, and are extending or switching their visas because they cannot return to Ukraine.
3. Regulation 4C will apply to treatment provided to eligible people from Ukraine on and after 24 February 2022. No charge may be made or recovered on or after this date. If charges have already been incurred since 24 February 2022, they must be cancelled and not recovered. If charges have already been paid for treatment on, or after, 24 February 2022, then that sum is to be

repaid. The exemption applies to any treatment provided on or after 24 February 2022, when the conflict in Ukraine began and the person can thereafter be considered as displaced, regardless of when they arrived in Scotland. If a person from Ukraine was already receiving treatment before this date, their treatment up until 24 February 2022 may still be chargeable, in common with any other overseas visitor (unless they are exempt under the 1989 Regulations for another reason). We anticipate that most services chargeable under the 1989 Regulations which might have been provided since 24 February 2022 to eligible people from Ukraine would have been services provided by Health Boards. In the event that an oral health assessment, dental examination, eye examination or sight test chargeable under the 1989 Regulations was provided by a dental practitioner, ophthalmic medical practitioner or ophthalmic optician those charges must not be made or recovered from the eligible person. Instead those charges will be recoverable from Practitioner Services.

Consultation

4. There has been no public consultation in relation to this instrument. However, Scottish Government is, will remain, in contact with all Health Boards regarding the invasion in Ukraine and will continue to monitor the impact of displaced people arriving in Scotland on healthcare services.
5. The UK Government have laid a similar amendment to the NHS England overseas visitors charging regulations on 17 March 2022, which came into force on the same day.² Charging policy is a devolved matter, and the Scottish Government is responsible for taking forward any amendments to the 1989 Regulations.

Impact Assessments

6. There is no, or no significant, impact on business, charities or voluntary bodies.
7. The impact on the public sector is that the existing obligation on Health Boards and the providers of certain NHS services to make and recover charges from overseas visitors from Ukraine when providing certain services has been removed.
8. Furthermore, the instrument is being introduced as a temporary measure that will largely impact Health Boards in Scotland. The Scottish Government will keep the impact of the exemption under review as the crisis in Ukraine develops. This will include considering the need for any further changes to the 1989 Regulations. Health Boards will be asked to monitor the number of eligible people from Ukraine who receive treatment and the costs involved. The requirement to undertake Impact Assessments will be considered while this instrument remains under review.

Financial Effects

9. The Cabinet Secretary for Health and Social Care confirms that no BRIA is

necessary, as the instrument has no, or no significant financial effect on the Scottish Government, local government or on business.

Guidance

10. The Scottish Government will provide guidance to NHS Boards and NHS Inform who will be involved in the operation of these changes.

Contact

11. John Cameron (email: john.cameron@gov.scot) can be contacted with any queries regarding this instrument.

¹ [UK visa support for Ukrainian nationals - GOV.UK \(www.gov.uk\)](https://www.gov.uk)

² [The National Health Service \(Charges to Overseas Visitors\) \(Amendment\) \(No. 2\) Regulations 2022 \(legislation.gov.uk\)](https://legislation.gov.uk)

Scottish Government

Directorate for Healthcare Quality and Improvement

24 March 2022

Dear Presiding Officer

**THE NATIONAL HEALTH SERVICE (CHARGES TO OVERSEAS VISITORS)
(SCOTLAND) AMENDMENT REGULATIONS 2022**

The National Health Service (Charges to Overseas Visitors) (Scotland) Amendment Regulations 2022 was made by the Scottish Ministers under sections 98 and 105 of the National Health Service (Scotland) Act 1978 on 24 March 2022. It is being laid before the Scottish Parliament today, 24 March 2022, and comes into force at 5pm today.

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.

This amending instrument is necessary to ensure that those fleeing the conflict in Ukraine, who are lawfully present in the United Kingdom are not charged for certain healthcare services provided by NHS Scotland. The UK Government recently announced visa routes open to persons fleeing Ukraine. Individuals who come to the UK under those schemes would be charged under the current provisions in the NHS (Charges to Overseas Visitors) (Scotland) Regulations 1989 for certain healthcare services provided by NHS Scotland.

This instrument introduces a new regulation 4C, which creates an exemption from the charges for all people who are ordinarily resident in Ukraine and are lawfully present in the UK. The exemption also applies to those peoples' spouses, civil partners or children. This approach ensures that the exemption is consistent across the available visa routes.

We are bringing these provisions into force now to provide clarity to those who are responsible for making and recovering charges, and to provide assurance to displaced people from Ukraine that they are entitled to receive any treatment and care they require from NHS Scotland, at no charge, while lawfully present in Scotland. Similar amendments which apply in England have been in force since 5pm on 17 March.

A copy of this letter goes to Stuart McMillan, Convenor of the Delegated Powers and Law Reform Committee, and Gillian Martin, Convenor of the Health, Social Care and Sport Committee.

JOHN CAMERON
Planning & Quality Division