

Health, Social Care and Sport Committee

24th Meeting, 2022 (Session 6), Tuesday, 28 June 2022

Subordinate legislation – Affirmative SSI

1. This paper invites the Committee to consider the following affirmative instrument:

- [The Health \(Tobacco, Nicotine etc. and Care\) \(Scotland\) Act 2016 \(Supplementary Provision\) Regulations 2022](#)

Parliamentary procedure:

2. The affirmative procedure means that an instrument cannot be made and come into force unless the Parliament has voted to approve it (rule 10.6.1 of standing orders).
3. Affirmative instruments are first looked at by the DPLR Committee before being considered by the lead committee (usually the committee which examined the Bill for the Act that the SSI is made under or whose remit is most aligned).
4. It is usual practice for the lead committee to take evidence from the relevant Scottish minister in advance of considering the instrument. The committee can ask the minister and any officials questions about the SSI.
5. During its formal consideration, a member of the Scottish Government proposes, by motion, that the lead committee recommend that the instrument or draft instrument be approved. The committee has up to 90 minutes to debate the motion.
6. The lead committee must report its recommendation to Parliament within 40 days of the SSI being laid. If the committee agrees the SSI should be approved, the whole of the Parliament then gets a chance to vote on it in the Chamber. If the lead committee decides the SSI should not be approved, the Parliamentary Bureau decides whether MSPs should vote on it in the Chamber.

Title of Instrument: The Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016 (Supplementary Provision) Regulations 2022

Laid Date: 6 June 2022

Reporting deadline: 18 September 2022

Type of instrument: Affirmative

Purpose

7. The purpose of this instrument is to ensure that Environmental Health Officers (EHOs) are able to issue fixed penalty notices in respect of the offence of smoking in a no-smoking area outside a hospital building and the offence of failing to comply with signage requirements at entrances to hospital buildings, regarding the no-smoking area outside those buildings.
8. The policy note is included at **Annexe A**.

Background

9. The Health, Social Care and Sport Committee considered the he Prohibition of Smoking Outside Hospital Buildings (Scotland) Regulations 2022 [draft] at its meeting on [29 March 2022](#) and recommended that the regulations be approved.
10. This instrument uses the ancillary power in section 35 of the Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016 Act to amend schedule 1 of the Smoking, Health and Social Care (Scotland) Act 2005 Act, to provide that EHOs can issue fixed penalty notices in respect of three new offences to ensure effective enforcement.

Delegated Powers and Law Reform Committee consideration

11. The Delegated Powers and Law Reform Committee considered the instrument at its meeting on [21 June 2022](#) and made no recommendations in relation to this instrument.

For decision

12. The Committee must decide whether or not to agree the motion, and then report to Parliament accordingly, by 18 September 2022.

Clerks to the Committee

23 June 2022

POLICY NOTE**The Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016 (Supplementary Provision) Regulations 2022****SSI 2022/XXX**

The above instrument is made in exercise of the powers conferred on the Scottish Ministers by section 35 of the Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016 and all other powers enabling them to do so. The instrument is subject to affirmative procedure.

Purpose of the instrument. The purpose of this instrument is to ensure that Environmental Health Officers (EHOs) are able to issue fixed penalty notices in respect of the offence of smoking in a no-smoking area outside a hospital building and the offence of failing to comply with signage requirements at entrances to hospital buildings, regarding the no-smoking area outside those buildings.

Policy Objectives**Background**

Section 20 of the Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016 (the 2016 Act) will amend, when it comes into force on 5 September 2022, the Smoking, Health and Social Care (Scotland) Act 2005 (the 2005 Act). This amendment to the 2005 Act, together with the Prohibition of Smoking Outside Hospital Buildings (Scotland) Regulations 2022 (the 2022 Regulations), creates no-smoking areas outside of hospital buildings. Section 20 of the 2016 Act inserts new sections 4A to 4D into the 2005 Act and then making consequential amendments to the 2005 Act, notably in relation to proceedings for offences and fixed penalty notices. The 2022 Regulations supplement provision made in section 20 of the 2016 Act.

Three new offences will be established when section 20 of the 2016 Act comes into force. New section 4A of the 2005 Act creates the offence of permitting others to smoking in the no- smoking area outside of hospital buildings. It is only people having the management and control of the no-smoking area who can commit this offence. New section 4B creates the offence of smoking outside hospital buildings. New section 4C(5) creates the offence of failing to conspicuously display no-smoking notices at every entrance to a hospital building. This offence can also only be committed by a person having management and control of the building.

Section 20(8)(a) to (c) of the 2016 Act amends schedule 1 of the 2005 Act to make provision regarding who can issue fixed penalty notices in respect of the above three offences. In the absence of these amendments, schedule 1 sets out who can issue fixed penalty notices in respect of the equivalent offences under sections 1 to 3 of the 2005

2 [Prohibition of Smoking Outside Hospital Buildings \(Scotland\) Regulations 2022: CRWIA - gov.scot \(www.gov.scot\)](#)

3 [Prohibition of Smoking Outside Hospital Buildings \(Scotland\) Regulations 2022: FSD - gov.scot \(www.gov.scot\)](#)

4 [Prohibition of Smoking Outside Hospital Buildings \(Scotland\) Regulations 2022: ICIA - gov.scot \(www.gov.scot\)](#)

5 [Prohibition of Smoking Outside Hospital Buildings \(Scotland\) Regulations 2022: SEA pre-screening notification - gov.scot \(www.gov.scot\)](#)