

Health, Social Care and Sport Committee

27th Meeting, 2022 (Session 6), Tuesday, 27 October 2022

Subordinate legislation

Note by the clerk

Purpose

1. This paper invites the Committee to consider the following negative instruments:
 - [The Sports Grounds and Sporting Events \(Designation\) \(Scotland\) Amendment \(No. 2\) Order 2022](#)
 - [The Food Information \(Transitional Provisions\) \(Miscellaneous Amendments\) \(Scotland\) 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

22 September 2022

SSI 2022/263

Title of Instrument: The Sports Grounds and Sporting Events (Designation) (Scotland) Amendment (No. 2) Order 2022

Type of Instrument: Negative

Laid Date: 2 September 2022

Meeting Date: 27 September 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 [20 September 2022](#) and made no recommendations in relation to this instrument.

Reporting deadline: 24 October 2022

Purpose

11. The purpose of this 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 as amended in 2022. 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 the Criminal Law (Consolidation) (Scotland) Act 1995 ("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.

Background

12. 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 1995 Act.
13. The 2014 Order was amended in 2022 to properly reflect the current lists of grounds and events to which the Act should apply at that time. The 2014 Order also needed to be updated to include football matches in the competition for the UEFA Europa Conference League.

14. This order provides a further update to reflect the relevant sports grounds for the 2022-23 season, taking account of promotions, relegations and other changes following the end of season 2021-22.
15. A copy of the Scottish Government's Policy Note is included in **Annexe A**.

SSI 2022/265

Title of Instrument: The Food Information (Transitional Provisions) (Miscellaneous Amendments) (Scotland) Regulations 2022

Type of Instrument: Negative

Laid Date: 5 September 2022

Meeting Date: 27 September 2022

Minister to attend meeting: No

Motion for annulment lodged: No

Reporting deadline: 24 October 2022

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

16. The Delegated Powers and Law Reform Committee considered this at their meeting on [20 September 2022](#) and agreed to draw this 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.
17. The Committee also reported it was content with the explanations provided by the Scottish Government for failure to comply with the laying requirements.
18. A copy of the Scottish Government's letter to the Presiding Officer explaining the reasons for the breach is included in **Annexe C**.

Purpose

19. The purpose of the instrument is to make amendments to existing transitional provisions contained in subordinate legislation and in retained EU legislation which relate to various food labelling requirements. The amendments, which only apply in Scotland, extend previous transitional arrangements, which were due to expire at the end of September 2022, so that they continue to apply until the end of 2023.
20. A copy of the Scottish Government's Policy Note is included in **Annexe B**.

Annexe A

POLICY NOTE

THE SPORTS GROUNDS AND SPORTING EVENTS (DESIGNATION) (SCOTLAND) AMENDMENT (NO. 2) ORDER 2022**SSI 2022/263**

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 was amended in 2022 to properly reflect the current lists of grounds and events to which the Act should apply at that time. The 2014 Order also needed to be updated to include football matches in the competition for the UEFA Europa Conference League.

This order provides a further update to reflect the relevant sports grounds for the 2022-23 season, taking account of promotions, relegations and other changes following the end of season 2021-22.

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 as amended in 2022. 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).

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

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.

No formal consultation process has taken place with the football clubs. The clubs are subject to the provisions of Part II of the Criminal Law (Consolidation) (Scotland) Act 1995.

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
August 2022

Annexe B

POLICY NOTE

The Food Information (Transitional Provisions) (Miscellaneous Amendments) (Scotland) Regulations 2022**SSI 2022/265**

The above instrument is made by the Scottish Ministers in exercise of the powers conferred by sections 16(1)(e) and 48(1)(c) of the Food Safety Act 1990 and all other powers enabling them to do so. The instrument is subject to negative procedure.

Summary Box

The purpose of the instrument is to make amendments to existing transitional provisions contained in subordinate legislation and in retained EU legislation which relate to various food labelling requirements. The amendments, which only apply in Scotland, extend previous transitional arrangements, which were due to expire at the end of September 2022, so that they continue to apply until the end of 2023.

Policy Objective

The purpose of the Food Information (Transitional Provisions) (Miscellaneous Amendments) (Scotland) Regulations 2022 is to extend the effect of food labelling transitional provisions relating to EU Exit. The new EU exit related labelling legislation was due to come into force from 1 Oct 2022 but the intention of the amending legislation is to change this coming into force date to the 1st January 2024.

Policy Background

The transitional period for several EU exit related changes to food labelling requirements is due to expire on 30 September after which the changes are due to come into effect. These changes became necessary to reflect the UK's departure from the EU. However, UK Government announced that import controls on goods from the EU to GB, including food labelling changes, were to be delayed from July 2022 until the end of 2023.

The UK Government's reason for the change is to recognise the significant supply chain impact due to Russia's illegal invasion of Ukraine and the recent rise in global energy costs. In their view it would be wrong to impose new administrative requirements on businesses who may pass on the associated costs to consumers already facing pressures on their finances. The same changes are taking place in Wales.

If a similar postponement is not implemented in Scotland, it would see Scotland out of step with England and Wales as Scotland would have different labelling requirements between 1st October 2022 and January 2024. The main risk of this is the potential confusion it would cause for enforcement authorities as it would mean they would be obligated by Scots labelling law to enforce against products directly

imported into Scotland where the law differs between Scotland and rest of the UK. For products directly imported into rest of the UK the effect of the Internal Market Act is that these products could be lawfully sold in Scotland even if they did not comply with the law in Scotland, as long as they comply with the law in the part of UK they are imported into. Food businesses would also likely be concerned if different approaches were taken across GB. Therefore, the Scottish Government and Food Standards Scotland (FSS) have determined that, in order to avoid the risks noted above, similar legislative changes to those being made in the rest of the UK should be made in Scotland.

Consultation

In compliance with the requirements of Article 9 of Regulation (EC) No. 178/2002 of the European Parliament and of the Council laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety, there has been open and transparent public consultation during the preparation and evaluation of this SSI. FSS and , alongside the Scottish Government, alongside Defra, Welsh Government, and FSA England and Wales carried out a joint short consultation with stakeholders across GB from the 18 th to the 30th of August.

A total of 18 Stakeholders responded to the consultation, of which, 80% were in support of delaying these changes. Some of the main reasons given for supporting the delay focused on stakeholders being given additional time to be able to use up stocks of already printed labels as well as allowing stakeholders more time to update labels to meet the new requirements when they come into force.

Impact Assessments

FSS and Scottish Government consider that a specific BRIA (Business and Regulatory Impact Assessment) is not required for these amendments to food labelling transitional provisions relating to EU Exit. This SSI does not introduce any new costs to businesses or industry as it is not creating new legislation, it is only extending the period during which current food labelling provisions can continue to be applied.

Financial Effects

The Scottish Ministers confirm that a BRIA is not necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Food Standards Scotland and Scottish Government
September 2022

Annexe C**Food Information (Transitional Provisions) (Miscellaneous Amendments) (Scotland) Regulations 2022 (SSI 2022/265)**

On 5 September 2022, the Scottish Government wrote to the Presiding Officer:

The Food Information (Amendment of Transitional Provisions) (Scotland) Regulations 2022 (“the instrument”) is due to be made and laid by the Scottish Ministers today in exercise of the powers conferred by sections 16(1)(e) and 48(1)(c) of the Food Safety Act 1990, and will come into force on 30th September 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.

The transitional period allowing the current law to apply rather than several EU exit related changes to food labelling requirements is due to expire on 30th September 2022 after which date the changes were due to come into effect. These labelling changes became necessary to reflect the UK’s departure from the EU and the transitional period were to allow businesses time to use up existing labelling stocks and implement the revised labelling requirements. This instrument provides for an extension to the expiry date of the transitional period when the current law applies, and relates to the following pieces of legislation;

- The Food Information (Scotland) Regulations 2014
- The Food Hygiene (Scotland) Regulations 2006
- The Quick-frozen Foodstuffs Regulations 1990
- The Country of Origin of Certain Meats (Scotland) Regulations 2016
- The Food Additives, Flavourings, Enzymes and Extraction Solvents (Scotland) Regulations 2013
- The Caseins and Caseinates (Scotland) Regulations 2016
- Commission Regulation (EC) No 1825/2000
- Commission Implementing Regulation (EU) No 29/2012
- Commission Implementing Regulation (EU) No 543/2011
- The Beef and Veal Labelling (Scotland) Regulations 2010
- The Marketing of Fresh Horticultural Produce (Scotland) Regulations 2009
- Commission Regulation (EC) No 589/2008
- Commission Delegated Regulation (EU) No 2019/33

The UK Government announced that import controls on goods from the EU to GB were to be delayed from July 2022 until the end of 2023, including changes to food labelling changes. The UK Government’s reason for extending the duration of these provisions is to recognise the significant supply chain impact due to Russia’s illegal invasion of Ukraine and the recent rise in global energy costs. In their view it would be wrong to impose new administrative requirements on businesses who may pass on the associated costs to consumers already facing pressures on their finances. Scottish Government are progressing with a similar postponement as failure to do so

would see labelling requirements in Scotland out of step with England and Wales. This would have the potential to lead to uncertainty and confusion for enforcement authorities and food businesses. Scottish Ministers and Welsh Ministers have agreed to postpone labelling changes.

The requirement for the breach is to ensure the instrument comes into force timeously in order to have the desired effect of extending the transition period and to ensure alignment with analogous legislation being made at Westminster and in Wales. The existing EU exit legislation which provides for these specific labelling changes is due to come into force on 1 Oct 2022. The decision to postpone these changes was only made recently and the instrument, which will extend the coming into force date from 1 Oct 2022 until 1st January 2024, needs to come into force on 30 Sept 2022 otherwise the originally planned labelling changes will still come into force on 1 Oct 2022. Consequently, the provisions in the instrument will not fulfil the requirement to delay the changes until 1st January 2024 if they do not come into force on 30 September. This in turn would see us out of step with legislation in the rest of GB and could cause issues for our enforcement authorities.

The instrument only changes the coming into force date of these labelling changes for the specific areas described above and does not alter the substance of the provisions themselves. However, as a result of the occurrence and timing of this change, it has not been possible for us to comply with the 28 day rule.

FSS and the Scottish Government are cognisant of the difficulties that breaching the 28 day rule poses in terms of Parliamentary scrutiny, and regret that on this occasion, due to the time constraints imposed by the original coming into force date and UK Government's announcement of these changes, it has been impossible to comply with this requirement.