



The Scottish Parliament  
Pàrlamaid na h-Alba

## JUSTICE COMMITTEE

### AGENDA

24th Meeting, 2013 (Session 4)

Tuesday 17 September 2013

The Committee will meet at 10.00 am in Committee Room 6.

1. **Declaration of interests:** Margaret Mitchell will be invited to declare any relevant interests.
2. **Decisions on taking business in private:** The Committee will decide whether to take items 5 and 6 in private. It will also decide whether its consideration of its approach to its scrutiny of the budget should be taken in private at its next meeting.
3. **Tribunals (Scotland) Bill:** The Committee will take evidence on the Bill at Stage 1 from—

Rt Hon Lord Gill, Lord President of the Court of Session;

Chris Nicholson, Deputy Legal Secretary to the Lord President;

Innes Fyfe, Head of Strategy and Governance, Judicial Office for Scotland;

and then from—

Roseanna Cunningham, Minister for Community Safety and Legal Affairs;

Linda Pollock, Head of Policy, Tribunals and Administrative Justice Policy, Sandra Wallace, Bill Team Leader, Delina Cowell, Bill Team Manager, and Michael Gilmartin, Solicitor, Scottish Government.

4. **Subordinate legislation:** The Committee will consider the following negative instruments—

Sale of Alcohol to Children and Young People (Scotland) Amendment Regulations 2013 (SSI 2013/199);

Vulnerable Witnesses (Giving evidence in relation to the determination of Children's Hearing grounds: Authentication of Prior Statements) (Scotland) Regulations 2013 (SSI 2013/215);

Football Banning Orders (Regulated Football Matches) (Scotland) Order 2013 (SSI 2013/228);

Sports Grounds and Sporting Events (Designation) (Scotland) Amendment (No. 2) Order 2013 (SSI 2013/229);

Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Amendment Regulations 2013 (SSI 2013/247);

Legal Aid and Advice and Assistance (Photocopying Fees and Welfare Reform) (Miscellaneous Amendments) (Scotland) Regulations 2013 (SSI 2013/250).

5. **Anti-social Behaviour, Crime and Policing Bill (UK Parliament legislation):** The Committee will consider a draft report.
6. **Engagement with stakeholders:** The Committee will consider correspondence received.

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The papers for this meeting are as follows—

**Agenda item 3**

Paper by the clerk and SPICe (private paper)

J/S4/13/24/1 (P)

[Copy of the Bill, accompanying documents and SPICe briefing](#)

[Written submissions received on the Bill](#)

**Agenda item 4**

SSI cover note

J/S4/13/24/2

[Sale of Alcohol to Children and Young People \(Scotland\) Amendment Regulations 2013 \(SSI 2013/199\)](#)

[Vulnerable Witnesses \(Giving evidence in relation to the determination of Children's Hearing grounds: Authentication of Prior Statements\) \(Scotland\) Regulations 2013 \(SSI 2013/215\)](#)

[Football Banning Orders \(Regulated Football Matches\) \(Scotland\) Order 2013 \(SSI 2013/228\)](#)

[Sports Grounds and Sporting Events \(Designation\) \(Scotland\) Amendment \(No. 2\) Order 2013 \(SSI 2013/229\)](#)

[Civil Contingencies Act 2004 \(Contingency Planning\) \(Scotland\) Amendment Regulations 2013 \(SSI 2013/247\)](#)

[Legal Aid and Advice and Assistance \(Photocopying Fees and Welfare Reform\) \(Miscellaneous Amendments\) \(Scotland\) Regulations 2013 \(SSI 2013/250\)](#)

**Agenda item 5**

Draft report (private paper)

J/S4/13/24/3 (P)

**Agenda item 6**

Paper by the clerk (private paper)

J/S4/13/24/4 (P)

**Justice Committee**

**24<sup>th</sup> Meeting, 2013 (Session 4), Tuesday, 17 September 2013**

**Subordinate legislation**

**Note by the clerk**

**Purpose**

1. This paper invites the Committee to consider the following negative instruments:
  - Sale of Alcohol to Children and Young Persons (Scotland) Amendment Regulations 2013 (SSI 2013/199);
  - Vulnerable Witnesses (Giving evidence in relation to the determination of Children's Hearing grounds: Authentication of Prior Statements) (Scotland) Regulations 2013 (SSI 2013/215);
  - Football Banning Orders (Regulated Football Matches) (Scotland) Order 2013 (SSI 2013/228);
  - Sports Grounds and Sporting Events (Designation) (Scotland) Amendment (No. 2) Order 2013 (SSI 2013/229);
  - Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Amendment Regulations 2013 (SSI 2013/247);
  - Legal Aid and Advice and Assistance (Photocopying Fees and Welfare Reform) (Miscellaneous Amendments) (Scotland) Regulations 2013 (SSI 2013/250).
2. Further details of the procedure for negative instruments are set out in the Annexe attached to this paper.

## **Sale of Alcohol to Children and Young Persons (Scotland) Amendment Regulations 2013 (SSI 2013/199)**

### **Purpose of instrument**

3. The purpose of the instrument is to expand the list of prescribed documents that may be accepted by retailers as proof of a person's age before the retailer makes a sale of alcohol.
4. The instrument comes into force on 1 October 2013.
5. Further details on the purpose of the instrument can be found in the policy note (see below). An electronic copy of the instrument is available at:  
<http://www.legislation.gov.uk/ssi/2013/199/contents/made>

### **Consultation**

6. The policy note on the instrument confirms that a public consultation was conducted in 2012. Views were received from retailers, licensing authorities and others with an interest. Representations were also received from EU countries whose citizens can visit Scotland without a passport and therefore may not have ready access to any of the existing acceptable forms of identification.

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

7. The Delegated Powers and Law Reform Committee (DPLR) considered this instrument at its meeting on 25 June 2013 and agreed that there was no need to draw the Parliament's attention to the instrument on any grounds within its remit.

### **Justice Committee consideration**

8. Members are invited to consider the instrument and make any comment or recommendation on it. If the Committee agrees to report to the Parliament on this instrument, it is required to do so by 23 September 2013.

### **Policy Note: Sale of Alcohol to Children and Young Persons (Scotland) Amendment Regulations 2013 (SSI 2013/199)**

The above instrument was made in exercise of the powers conferred on Scottish Ministers by sections 102(4)(c), 108(7)(c) 146(4) and 147(1) of the Licensing (Scotland) Act 2005<sup>(1)</sup> and all other powers enabling them to do so. The instrument is subject to negative resolution procedure.

### **Policy Objectives**

The instrument expands the list of prescribed documents that may be accepted by retailers as proof of a person's age before the retailers makes a sale of alcohol.

It is an offence to sell alcohol to persons under 18. However, it is a defence for a person to show that they have taken reasonable steps to establish the customers age.

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<sup>(1)</sup> 2005 asp 16.

One such step is that the person selling the alcohol has been shown a proof of age document which Scottish Ministers have listed as being acceptable.

At present, the documents which can be used as proof of age are:

- a passport;
- an EU photocard driving licence; and,
- for alcohol a photographic identity card approved by the British Retail Consortium for the purposes of its Proof of Age Standards Scheme (PASSCard);

The instrument prescribes additional documents which are:

- Ministry of Defence Military Identity Cards;
- European Union Identity Cards; and
- Biometric Residents Permits.

The additional documents will allow those who may not be in possession of other forms of identification a means to prove their age in order to purchase alcohol.

### **Public Consultation**

A public consultation was conducted in 2012. Views were received from retailers, licensing authorities and others with an interest. Representations were received from EU countries whose citizens can visit Scotland without a passport and therefore may not have ready access to any of the existing acceptable forms of identification.

### **Financial Effects**

The order will not have financial effects for the Scottish Government and we do not anticipate costs for enforcement. Retailers may face additional costs in training staff in the additional acceptable forms of identification. It will be a commercial decision for retailers to decide upon the level of training required. Premises that deal with large number of tourists who may make use of the new forms of identification will have different requirements to somewhere where the new forms will only be produced infrequently.

Scottish Government  
Justice Directorate  
June 2013

**Vulnerable Witnesses (Giving evidence in relation to the determination of Children's Hearing grounds: Authentication of Prior Statements) (Scotland) Regulations 2013 (SSI 2013/215)**

**Purpose of instrument**

9. The purpose of the instrument is to make provision for the authentication of a prior statement contained in a precognition on oath or one made in prior proceedings (either criminal or civil and in UK or elsewhere). Such authentication will allow these statements to be admissible in children's hearing proceedings taking place in the sheriff court.

10. The instrument comes into force on 27 September 2013.

11. Further details on the purpose of the instrument can be found in the policy note (see below). An electronic copy of the instrument is available at:  
<http://www.legislation.gov.uk/ssi/2013/215/contents/made>

**Consultation**

12. The policy note on the instrument confirms that there was an open public consultation which ran for 12 weeks from 9 December 2011 to 2 March 2012. Two responses were received and both supported the instrument as drafted.

**Delegated Powers and Law Reform Committee consideration**

13. The Delegated Powers and Law Reform Committee (DPLR) considered this instrument at its meeting on 3 September 2013 and agreed that there was no need to draw the Parliament's attention to the instrument on any grounds within its remit.

**Justice Committee consideration**

14. Members are invited to consider the instrument and make any comment or recommendation on it. If the Committee agrees to report to the Parliament on this instrument, it is required to do so by 30 September 2013.

**Policy Note: Vulnerable Witnesses (Giving evidence in relation to the determination of Children's Hearing grounds: Authentication of Prior Statements) (Scotland) Regulations 2013 (SSI 2013/215)**

The above instrument is made in exercise of the powers conferred by section 22A(8) of the Vulnerable Witnesses (Scotland) Act 2004 as inserted by the Children's Hearings (Scotland) Act 2011 ("the 2011 Act"). The instrument is subject to negative procedure.

That section enables the Scottish Ministers to prescribe by regulations the manner in which a prior statement is to be authenticated, to enable its use in Children's Hearings proceedings within the Sheriff Court

A prior statement is a type of special measure intended to help vulnerable witnesses in court proceedings give the best evidence they can. A prior statement enables the witness' evidence in chief to be recorded without interruption before the hearing and alleviates the need for them to adopt or otherwise speak to the statement when giving

evidence in court i.e. confirm that the statement was made by them and is accurate. The prior statement is evidence in the same way as direct oral evidence given at the hearing. The prior statement requires to be authenticated before it can be used in any proceedings.

The use of special measures is intended to reduce the anxiety and pressure that vulnerable witnesses may feel when they give evidence. They are currently available to children under 16 and other vulnerable witnesses where there is a risk that the quality of their evidence will be diminished by reason of a mental disorder or fear or distress in connection with giving evidence at the trial. Applications for special measures are made through either child witness notices (for those under 16 or 18 in human trafficking cases) or vulnerable witness applications (for those aged 16 and over).

The Victims and Witnesses (Scotland) Bill was introduced to the Scottish Parliament on 6 February 2013. It will amend the definition of “child witness” to those under age 18 in civil and criminal proceedings and the definition of vulnerable witness in criminal proceedings to include alleged victims of sexual offences, domestic abuse, human trafficking, and stalking. These categories of vulnerable witness will be entitled to use certain special measures when giving evidence. As a result, in criminal cases applications for special measures for child witnesses and deemed vulnerable witnesses will be made through a vulnerable witness notice. Other categories of vulnerable witness will continue to apply through a vulnerable witness application. A child witness notice will continue to be used in civil cases.

### **Policy objectives**

The intention is to enable witnesses to give the best evidence they can by making prior statements available as a special measure to child and adult vulnerable witnesses in children’s hearings court proceedings to ensure parity with criminal proceedings. Arrangements to use and authenticate prior statements in children’s hearings court proceedings are based as far as possible on the existing arrangements in criminal proceedings.

Regulation 2 details how prior statements are to be authenticated. They will require a signed prescribed certificate to be attached to them certifying that the statement is genuine. The certificate will have to be signed by the witness or a party who was present when the statement was made. The Schedule sets out the prescribed certificate to be used in the authentication of a prior statement.

### **Commencement date**

The date for the commencement of these regulations is 27 September 2013.

### **Consultation**

There has been an open public consultation on this instrument which ran for 12 weeks from 9 December 2011 to 2 March 2012. Two responses were received. Both supported the instrument as drafted.

### **Impact assessments**

There are no equality impact issues.



## **Financial effects**

The regulations would not impose any additional costs on any other bodies, individuals or Businesses.

Scottish Government  
Justice Directorate  
June 2013

## **Football Banning Orders (Regulated Football Matches) (Scotland) Order 2013 (SSI 2013/228)**

### **Purpose of instrument**

15. The purpose of the instrument is to ensure continuity of application of the law following reconstruction of the Scottish football league.

16. The instrument comes into force on 6 July 2013.

17. Further details on the purpose of the instrument can be found in the policy note (see below). An electronic copy of the instrument is available at:  
<http://www.legislation.gov.uk/ssi/2013/228/contents/made>

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

The Delegated Powers and Law Reform Committee (DPLR) considered this instrument at its meeting on 3 September 2013 and agreed to draw the instrument to the attention of the Parliament on the ground that it failed to comply with the 28 day rule. However, the Committee was content that the breach of the rule was necessary to update the definition of “regulated football matches” contained in section 55(3) of the Police, Public Order and Criminal Justice (Scotland) Act 2006 to include pre-season football matches where one or both of the participating teams represents a club which is a member of the Scottish Professional Football League.

18. The relevant extract from the DPLR report on the instrument is reproduced on page 8 of this paper.

### **Justice Committee consideration**

19. Members are invited to consider the instrument and make any comment or recommendation on it.

20. Under Rule 10.3A, the Committee is obliged to consider the explanation given to the Presiding Officer for the breach of laying requirements. It may also draw this explanation to the attention of the Parliament in any report on the instrument. A copy of the letter to the Presiding Officer is attached at page 9 of this paper.

21. As noted above, the DPLR Committee was satisfied with the reason given for this breach of the laying requirements.

22. If the Committee agrees to report to the Parliament on this instrument, it is required to do so by 7 October 2013.

### **Policy Note: Football Banning Orders (Regulated Football Matches) (Scotland) Order 2013 (SSI 2013/228)**

The above instrument is made by Scottish Ministers in exercise of the powers conferred by section 55(4) of the Police, Public Order and Criminal Justice (Scotland) Act 2006, and all other powers enabling them to do so.

## Policy Objectives

This Order is made in consequence of Scottish football league reconstruction. Scottish football clubs voted on 27 June 2013 in favour of the amalgamation of the Scottish Premier League and the Scottish Football League to form the Scottish Professional Football League. The immediate effect of that vote was for members of the Scottish Football League to become members of the Scottish Premier League. The Scottish Premier League then applied to change its name to the Scottish Professional Football League and that name change has now taken place.

The process of league reconstruction has implications for section 55(3) of the Police, Public Order and Criminal Justice (Scotland) Act 2006, which defines ‘regulated football matches’ for the purposes of Football Banning Orders and the offence of ‘offensive behaviour at regulated football matches’ (section 1 of the Offensive Behaviour and Threatening Communications (Scotland) Act 2012).

The current definition of ‘regulated football matches’ include matches where one or both of the participating teams “represents a club which is for the time being a member of the Scottish Premier League or the Scottish Football League”. As a consequence of league reconstruction, that definition requires to be changed to refer to the Scottish Professional Football League to ensure that the law continues to apply to Scottish football clubs in membership of the Scottish Professional Football League in the same way as it has applied to them as members of the Scottish Premier League and the Scottish Football League.

## Financial Effects and Other Impacts

This instrument is intended to ensure continuity of application of the law, so that the law continues to impact on Scottish football clubs after league reconstruction in the same way as it has done beforehand. As there is no change in substance in the application of the law, no Business and Regulatory Impact Assessment or Strategic Environmental Assessment is required.

Scottish Government  
Community Safety Directorate  
July 2013

### ***Extract from the Delegated Powers and Law Reform Committee’s 42<sup>nd</sup> Report, 2013 (Session 4)***

#### **Football Banning Orders (Regulated Football Matches) (Scotland) Order 2013 (SSI 2013/228) (Justice Committee)**

1. The Order amends section 55(3) of the Police, Public Order and Criminal Justice (Scotland) Act 2006. Section 55(3) defines “regulated football matches” for the purposes of Football Banning Orders, and the offence of “offensive behaviour at regulated football matches” (section 1 of the Offensive Behaviour and Threatening Communications (Scotland) Act 2012).

2. The instrument was made on 5 July and came into force on 6 July. It was laid before the Parliament on 8 July. This breaches the “28 day rule” requirement between

the laying date and the coming into force date of the instrument. (The breach of this rule does not affect the validity of the Regulations).

3. The Scottish Ministers provided a letter to the Presiding Officer explaining the failure to comply with the 28 day rule. The correspondence is reproduced in the Appendix.

**4. There has been a failure to comply with the 28 day rule. The Committee therefore draws the instrument to the attention of the Parliament under reporting ground (j).**

**5. However, the Committee is content that the breach of the rule was necessary to update the definition of “regulated football matches” contained in section 55(3) of the Police, Public Order and Criminal Justice (Scotland) Act 2006 to include pre-season football matches where one or both of the participating teams represents a club which is a member of the Scottish Professional Football League.**

**6. Accordingly the Committee is content with the explanation provided by the Scottish Government.**

## Appendix

### **Football Banning Orders (Regulated Football Matches) (Scotland) Order 2013 (SSI 2013/228)**

#### **Breach of laying requirements: letter to Presiding Officer**

The above instrument was made by the Scottish Ministers under section 55(4) of the Police, Public Order and Criminal Justice (Scotland) Act 2006, and all other powers enabling them to do so. It is being laid before the Scottish Parliament today and is to come into force on 6<sup>th</sup> July 2013.

Section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 has not been complied with. In accordance with section 31(3) of that Act, this letter explains why.

This Order is made in consequence of Scottish football league reconstruction. Scottish football clubs voted on 27 June 2013 in favour of the amalgamation of the Scottish Premier League and the Scottish Football League to form the Scottish Professional Football League. The immediate effect of that vote was that members of the Scottish Football League became members of the Scottish Premier League. The Scottish Premier League then applied to change its name to the Scottish Professional Football League and that name change has now taken place.

The process of league reconstruction has implications for section 55(3) of the Police, Public Order and Criminal Justice (Scotland) Act 2006, which defines ‘regulated football matches’ for the purposes of Football Banning Orders and the offence of ‘offensive behaviour at regulated football matches’ (section 1 of the Offensive Behaviour and Threatening Communications (Scotland) Act 2012).

The current definition of ‘regulated football matches’ include matches where one or both of the participating teams “represents a club which is for the time being a member of the Scottish Premier League or the Scottish Football League”. Matches played by

members of the merged league prior to the change of name to the Scottish Professional Football League therefore remained 'regulated football matches', and subject to the law in the usual way, as clubs were members of the Scottish Premier League and covered by the existing definition.

However, a consequence of league reconstruction is that the definition requires to be changed to ensure that the law continues to apply to Scottish football clubs in membership of the Scottish Professional Football League in the same way as it has applied to them as members of the Scottish Premier League and the Scottish Football League. The Order therefore provides that the existing reference to the Scottish Premier League and the Scottish Football League is replaced by a reference to the Scottish Professional Football League.

Consideration was given to how quickly the change in definition of 'regulated football matches', and therefore the Order, needed to come into force. While next season's league fixtures are not scheduled to commence until early August, pre-season fixtures involving members of the Scottish Professional Football League commenced on Saturday 29 June (with matches involving Celtic, Dumbarton, Hibernian and Stenhousemuir).

It was therefore necessary for the Order to come into force immediately to ensure that matches played by members of the Scottish Professional Football League are 'regulated' football matches', in the same way they would have been before the change of league name, thereby ensuring continuity in the application of the law. The Order was therefore made as soon as the Government was informed that the change of name to the Scottish Professional Football League had been approved, to come into force the day after.

I hope that this explanation of the Government's reasons for making this order and for the timing of its provisions coming into force is helpful.

## **Sports Grounds and Sporting Events (Designation) (Scotland) Amendment (No. 2) Order 2013 (SSI 2013/229)**

### **Purpose of instrument**

23. The purpose of the instrument is to designate the Scottish Professional Football League, (following the merger of the Scottish Premier League and the Scottish Football League) for the purposes of Part II of the Criminal Law (Consolidation) (Scotland) Act 1995, which imposes certain restrictions on the sale and consumption of alcohol at designated grounds for designated sporting events.

24. The instrument comes into force on 6 July 2013.

25. Further details on the purpose of the instrument can be found in the policy note (see below). An electronic copy of the instrument is available at:

<http://www.legislation.gov.uk/ssi/2013/229/contents/made>

### **Consultation**

26. The policy note on the instrument confirms that no formal consultation process has taken place with the football authorities as the Order merely seeks to designate the name of the Scottish Professional Football League following the merger of the Scottish Premier League and the Scottish Football League both of whom have been subject to the provisions of Part II of the Criminal Law (Consolidation) (Scotland) Act 1995.

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

The Delegated Powers and Law Reform Committee (DPLR) considered this instrument at its meeting on 3 September 2013 and agreed to draw the instrument to the attention of the Parliament on the grounds that it failed to comply with the 28 day rule. However, the Committee was content that the breach of the rule was necessary to bring the Order into force to ensure that pre-season football matches played by members of the Scottish Professional Football League were subject to the terms of the Sports Grounds and Sporting Events (Designation) (Scotland) Order 2010 as they would have been prior to the change of the league name.

27. The relevant extract from the DPLR report on the instrument is reproduced on page 13 of this paper.

### **Justice Committee consideration**

28. Members are invited to consider the instrument and make any comment or recommendation on it.

29. Under Rule 10.3A, the Committee is obliged to consider the explanation given to the Presiding Officer for the breach of laying requirements. It may also draw this explanation to the attention of the Parliament in any report on the instrument. A copy of the letter to the Presiding Officer is attached at page 14 of this paper.

30. As noted above, the DPLR Committee was satisfied with the reason given for this breach of the laying requirements.

31. If the Committee agrees to report to the Parliament on this instrument, it is required to do so by 7 October 2013.

**Policy Note: Sports Grounds and Sporting Events (Designation) (Scotland) Amendment (No. 2) Order 2013 (SSI 2013/229)**

The above instrument was made in exercise of the powers conferred by section 18 of the Criminal Law (Consolidation) (Scotland) Act 1995. It amends the Sports Grounds and Sporting Events (Designation) (Scotland) Order 2010 (S.S.I 2010/199), which was amended by the Sports Grounds and Sporting Events (Designation) (Scotland) Amendment Order 2012 (S.S.I. 2012/164) and the Sports Grounds and Sporting Events (Designation) (Scotland) Amendment Order 2013 (S.S.I. 2013/4). The instrument is subject to the negative procedure.

**Policy Objectives**

Alcohol and other controls at sporting events were introduced in Scotland in 1980 for reasons of public order and safety.

The principal purpose of the instrument is to designate the Scottish Professional Football League following the merger of the Scottish Premier League and the Scottish Football League for the purposes of Part II of the Criminal Law (Consolidation)(Scotland) Act 1995.

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 Scottish Professional Football League, the Scottish Football Association and Police Scotland are notified of the Order when it is laid before the Parliament to alert them to the proposed change and also when the Order clears the Parliamentary process.

## Consultation

No formal consultation process has taken place with the football authorities as the Order merely seeks to designate the name of the Scottish Professional Football League following the merger of the Scottish Premier League and the Scottish Football League both of whom have been subject to the provisions of Part II of the Criminal Law (Consolidation) (Scotland) Act 1995.

## Financial Effects

The instrument has no financial effects on the Scottish Government or local government. It will have no effect either on any of the member clubs of the Scottish Professional Football League as the clubs have been subject to the provisions of Part II of the Criminal Law (Consolidation) (Scotland) Act 1995.

Scottish Government Sport and Physical Activity Division  
July 2013

### ***Extract from the Delegated Powers and Law Reform Committee's 42<sup>nd</sup> Report, 2013 (Session 4)***

#### **Sports Grounds and Sporting Events (Designation) (Scotland) Amendment (No. 2) Order 2013 (SSI 2013/229) (Justice Committee)**

1. The Order designates the Scottish Professional Football League, following the merger of the Scottish Premier League and the Scottish Football League, for the purposes of Part II of the Criminal Law (Consolidation) (Scotland) Act 1995 ("the 1995 Act").
2. The instrument was made on 5 July and came into force on 6 July. It was laid before the Parliament on 8 July. It therefore does not comply with the 28 day rule.
3. The Scottish Ministers provided a letter to the Presiding Officer explaining the failure to comply with the 28 day rule. The correspondence is reproduced in the Appendix.
4. **There has been a failure to comply with the 28 day rule. The Committee therefore draws the instrument to the attention of the Parliament under reporting ground (j).**
5. **However, the Committee is content that the breach of the rule was necessary to bring the Order into force to ensure that pre-season football matches played by members of the Scottish Professional Football League were subject to the terms of the Sports Grounds and Sporting Events (Designation) (Scotland) Order 2010 as they would have been prior to the change of the league name. Accordingly the Committee is content with the explanation provided by the Scottish Government.**



**Appendix****Sports Grounds and Sporting Events (Designation) (Scotland) Amendment (No. 2) Order 2013 (SSI 2013/229)****Breach of laying requirements: letter to Presiding Officer**

The above instrument was made by the Scottish Ministers under section 18 of the Criminal Law (Consolidation) (Scotland) Act 1995 and is required following league reconstruction within Scottish football. The instrument comes into force on 6<sup>th</sup> July 2013.

Section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 has not been complied with. In accordance with section 31(3) of that Act, this letter sets out why it is necessary to lay the instrument less than 28 days before it is brought into force.

This Order is made in consequence of Scottish football league reconstruction. Scottish football clubs voted on 27 June 2013 in favour of the amalgamation of the Scottish Premier League (SPL) and the Scottish Football League (SFL) to form the Scottish Professional Football League (SPFL). The immediate effect of that vote was that members of the SFL became members of the SPL. The SPL then applied to change its name to the Scottish Professional Football League and that name change has now taken place.

The need for subordinate legislation arises from statutory references to the SFL and the SPL in the Sports Grounds and Sporting Events (Designation) (Scotland) Order 2010. Those references will now require to be updated to refer to the SPFL to ensure that the law continues to apply to Scottish football clubs as members of that new organization in the same way that it has applied to them as members of the SFL and SPL. This necessary change can be achieved via secondary legislation, subject to negative procedure.

Consideration was given to how quickly the Order needs to come into force. While next season's league fixtures are not scheduled to commence until early August, the amendment was required to ensure that pre-season matches are caught by the relevant legislation following the formal change of name.

It was therefore necessary for the Order to come into force immediately without delay to ensure that matches played by members of the SPFL fall within the legislation in the same way they would have been before the change of league name, thereby ensuring continuity in the application of the law. The Order was therefore made as soon as the Government was informed that the change of name to the SPFL had been approved, to come into force the day after. The need to have the Order come into force as soon as possible is also the reason why it was not possible to lay it before it came into force, as it was not possible to wait until printing processes had been completed before doing so. [The Order was laid on the same day as it came into force but, due to the operation of section 3(2) of the Interpretation and Legislative Reform (Scotland) Act 2010, it came into force at the start of the day and was laid during the course of that day so technically it came into force before it was laid.]

I hope that this explanation of the Government's reasons for making this order and for the timing of its provisions coming into force is helpful.

## **Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Amendment Regulations 2013 (SSI 2013/247)**

### **Purpose of instrument**

32. The purpose of the instrument is to provide for Strategic Co-ordinating Groups (SCG) to be re-named Regional Resilience Partnerships, and for the agglomeration of the co-ordination areas from eight to three, by amendment of the Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005.

33. The instrument comes into force on 1 November 2013.

34. Further details on the purpose of the instrument can be found in the policy note (see below). An electronic copy of the instrument is available at:

<http://www.legislation.gov.uk/ssi/2013/247/contents/made>

### **Consultation**

35. The policy note on the instrument confirms that considerable consultation has taken place with those involved in this amendment, including appropriate consultation with Ministers at the Cabinet Office. A decision to move to the 3-area structure was agreed by the Chairs of all 8 existing SCGs and by the Resilience Advisory Board for Scotland (which contains senior representation from all the category 1 responder sectors) in November 2012.

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

36. The Delegated Powers and Law Reform Committee (DPLR) considered this instrument at its meeting on 10 September 2013 and agreed that there was no need to draw the Parliament's attention to the instrument on any grounds within its remit.

### **Justice Committee consideration**

37. Members are invited to consider the instrument and make any comment or recommendation on it. If the Committee agrees to report to the Parliament on this instrument, it is required to do so by 7 October 2013.

### **Policy Note: Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Amendment Regulations 2013 (SSI 2013/247)**

The above instrument was made in exercise of the powers conferred by section s 2(4) and (5) and 17(6) of the Civil Contingencies Act 2004. The instrument is subject to negative procedure

### **Policy Objectives**

The instrument makes minor changes to The Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005 in order to rename and consolidate the partnership groupings through which Scotland's Category 1 responder organisations (Police, Fire, Ambulance, Health Boards, Local Authorities and SEPA) meet together in order to plan for emergencies requiring a multi-agency response. The previous 8 Strategic Co-ordinating Group (SCG) areas were based on the 8 police and fire service boundaries that ceased to exist on 1 April 2013. The instrument will

establish three Regional Resilience Partnership (RRP) areas in Scotland – North, East and West, to facilitate multi-agency planning, response and recovery. These areas are based around arrangements established by Police Scotland and the Scottish Fire & Rescue Service to support strategic management of local activity. Local authority areas are used as the building blocks for the RRP areas – ensuring that no Local Authority area is split between RRP areas. The instrument has no impact on the underlying policy of the Civil Contingencies Act 2004 – the organisations designated as Category 1 responders and the duties placed on those organisations are unchanged.

## **Consultation**

Considerable consultation has taken place with those involved in this amendment. Direct discussions were held with all 8 existing SCGs over the course of 2012. The Scottish Government reached an early view that it should not dictate a decision in this area – rather it would be guided by the responder agencies in membership of the SCGs. A decision to move to the 3-area structure was agreed by the Chairs of all 8 existing SCGs and by the Resilience Advisory Board for Scotland (which contains senior representation from all the category 1 responder sectors outlined above) in November 2012. It was agreed to delay the introduction of the arrangement until after the introduction of Police Scotland and the Scottish Fire and Rescue Service in April 2013. Since the decision to move to 3 RRP areas was agreed all responder agencies have been involved in arrangements to ensure that their introduction is well-managed. Project groups were established in each of the 3 areas to ensure an effective transition and the process has been overseen by the Chairs of the current SCGs and by the Resilience Advisory Board for Scotland. Public consultation was not considered necessary as this change has no impact on the activities that responder organisations are required to carry out to fulfil the duties of the 2004 Act – the change is administrative.

Section 14 of the 2004 Act requires Scottish Ministers to consult UK Ministers on any regulations made under the 2004 Act (and vice versa). Whilst policy in this area is fully devolved the provision ensures that all parts of the UK are aware of the current arrangements across the country. Appropriate consultation has taken place with Ministers at the Cabinet Office.

## **Impact Assessments**

The screening process for an equality impact assessment was completed as part of the policy development process. Following consideration (and in view of the administrative nature of this change) it was concluded that the instrument would have no impact on equality issues – a detailed equality impact assessment has not, therefore, been completed in this case

## **Financial Effects**

The Cabinet Secretary for Justice confirms that no BRIA is necessary as the instrument has no financial effects on the SG, local government or on business.

Scottish Government  
Safer Communities Directorate  
August 2013

**Legal Aid and Advice and Assistance (Photocopying Fees and Welfare Reform) (Miscellaneous Amendments) (Scotland) Regulations 2013  
(SSI 2013/250)**

**Purpose of instrument**

38. The purpose of the instrument is to amend four sets of Regulations relating to advice and assistance and legal aid. It reduces the current fees allowable to solicitors for photocopying in relation to (a) advice and assistance, including advice by way of representation; (b) legal aid which is made available in connection with proceedings for contempt of court; (c) civil legal aid, and (d) criminal legal aid. In addition, the instruments amend a reference in the Advice and Assistance (Scotland) Regulations 1996 in order to clarify the treatment of the Personal Independent Payment (PIP) in relation to payment of fees and outlays where property has been recovered or preserved.

39. The instrument comes into force on 31 October 2013.

40. Further details on the purpose of the instrument can be found in the policy note (see below). An electronic copy of the instrument is available at:  
<http://www.legislation.gov.uk/ssi/2013/250/contents/made>

**Consultation**

41. The policy note on the instrument confirms that the Scottish Government worked with the Scottish Legal Aid Board and the Law Society of Scotland and the views of both bodies were taken into account when finalising this policy.

**Delegated Powers and Law Reform Committee consideration**

42. The Delegated Powers and Law Reform Committee (DPLR) considered this instrument at its meeting on 10 September 2013 and agreed that there was no need to draw the Parliament's attention to the instrument on any grounds within its remit.

**Justice Committee consideration**

43. Members are invited to consider the instrument and make any comment or recommendation on it. If the Committee agrees to report to the Parliament on this instrument, it is required to do so by 7 October 2013.

**Policy Note: Legal Aid and Advice and Assistance (Photocopying Fees and Welfare Reform) (Miscellaneous Amendments) (Scotland) Regulations 2013 (SSI 2013/250)**

The above instrument was made by the Scottish Ministers in exercise of the powers conferred by section 12(3) and 33(2)(a) and (b) and (3) of the Legal Aid (Scotland) Act 1986 and by all other powers enabling them to do so. The instrument is subject to negative procedure.

**Policy Objectives**

The current statutory provision for photocopying fees, in which a charge of eight or nine pence per sheet can be made, is no longer sustainable.

The policy intention is to reduce the standard photocopying fee for chargeable work across all types of legal assistance to 5 pence per sheet, for a job of up to 10,000 sheets. Where the photocopying job involves copying in excess of 10,000 sheets, the fee will be 5 pence for the first 10,000 sheets, thereafter one penny per sheet. There is to be no fee for photocopying for the first 20 sheets copied in any combination (whether 20 of one sheet, 5 of 4) or where fewer than 20 sheets are copied at any one time.

In November 2009, the Scottish Legal Aid Board (“the Board”) introduced a pilot scheme under which it offered to photocopy case related documents on behalf of solicitors free of printing and copying charges. The pilot scheme was in operation for over 2 years and showed that the use of the Board’s facilities resulted in copying and printing being completed successfully for a fraction of the cost chargeable on a legal aid account.

Whilst the photocopying service provided by the Board is not a matter for the Regulations, the Board will continue to offer a free photocopying service for jobs of over 10,000 sheets, which the Board usually returns completed to the solicitor within a matter of days.

### **Welfare Reform**

We have also taken the opportunity in these Regulations to amend the reference in the Advice and Assistance (Scotland) Regulations 1996 (the 1996 Regulations) in order to clarify the treatment of the Personal Independence Payment (PIP) in relation to payment of fees and outlays where property has been recovered or preserved.

Recent amendments to the 1996 Regulations, in response to UK welfare reform, have left some of the drafting in relation to PIP ambiguous. In relation to regulation 16 and circumstances in which the right to payment of fees or outlays out of any property recovered or preserved should not apply, the references should be to PIP as a whole. The recent amendments to regulation 16 have resulted in a reference to section 79 of the Welfare Reform Act 2012, which concerns only the mobility component of PIP. The specific reference to section 79 has therefore been replaced by a wider reference to Part 4 of the 2012 Act.

### **Consultation**

Throughout the period where this policy was being decided, the Scottish Government worked with the Scottish Legal Aid Board and the Law Society of Scotland, which is the representative body for the legal profession in Scotland. The views of both bodies were taken into account when finalising this policy.

### **Impact Assessments**

Equality impacts for this policy were considered as part of the equality impact assessment for the Legal Aid and Advice and Assistance (Photocopying Fees and Welfare Reform) (Miscellaneous Amendments) (Scotland) Regulations 2013 which is attached. No negative impacts were identified.

## Financial Effects

A Business and Regulatory Impact Assessment (BRIA) has been completed and is attached. The impact of this policy on business is that it provides consistency across regulations which allow for solicitors to be remunerated for the copying of papers in publicly funded legal assistance. Alternatively, firms may choose to take advantage of the free service offered by the Board.

The reduction to the fees for photocopying costs should not impact adversely on either client care, which is fundamental to solicitors, or to the timeous preparation of documents required to be lodged in court.

Predicted savings are as follows:

	Saving in year per £k		
	Civil	Solemn	Total
2013/14	7	107	114
2014/15	46	751	797
2015/16	61	765	826
2016/17	69	765	834

Scottish Government  
Justice Directorate  
29 August 2013

**ANNEXE****Negative instruments: procedure**

Negative instruments are instruments that are “subject to annulment” by resolution of the Parliament for a period of 40 days after they are laid. 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).

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.

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.

Each negative instrument appears on the Justice 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. In other cases, the Committee may be content simply to note the instrument and agree to make no recommendations on it.