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Delegated Powers and Law Reform Committee Comataidh Cumhachdan Tiomnaichte is Ath-leasachadh Lagh

Subordinate Legislation Considered by the Delegated Powers and Law Reform Committee on 26 April 2022



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Delegated Powers and Law Reform Committee

The remit of the Delegated Powers and Law Reform Committee is to consider and report on the following (and any additional matter added under Rule 6.1.5A)—

- (a) any—
 - (i) subordinate legislation laid before the Parliament or requiring the consent of the Parliament under section 9 of the Public Bodies Act 2011;
 - (ii) [deleted]
 - (iii) pension or grants motion as described in Rule 8.11A.1; and, in particular, to determine whether the attention of the Parliament should be drawn to any of the matters mentioned in Rule 10.3.1;
- (b) proposed powers to make subordinate legislation in particular Bills or other proposed legislation;
- (c) general questions relating to powers to make subordinate legislation;
- (d) whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation;
- (e) any failure to lay an instrument in accordance with section 28(2), 30(2) or 31 of the 2010 Act;
- (f) proposed changes to the procedure to which subordinate legislation laid before the Parliament is subject;
- (g) any Scottish Law Commission Bill as defined in Rule 9.17A.1; and
- (h) any draft proposal for a Scottish Law Commission Bill as defined in that Rule.
- (i) any Consolidation Bill as defined in Rule 9.18.1 referred to it in accordance with Rule 9.18.3.



dplr.committee@parliament.scot



0131 348 5212

Committee Membership



Stuart McMillan
Scottish National Party



Bill Kidd
Scottish National Party



Convener
Graham Simpson
Scottish Conservative
and Unionist Party



Craig Hoy
Scottish Conservative
and Unionist Party



Paul Sweeney
Scottish Labour

Introduction

1. At its meeting on 26 April, the Committee considered the following instruments under its remit and agreed to draw them to the attention of the relevant lead committee:
 - Rural Support (Controls) (Coronavirus) (Scotland) Regulations 2022 (SSI 2022/107);
 - National Health Service Superannuation and Pension Schemes (Miscellaneous Amendments) (Scotland) Regulations 2022 (SSI 2022/117); and
 - Non-Commercial Movement of Pet Animals (Scotland) Amendment Regulations 2022 (SSI 2022/131).
2. The Committee's recommendations in relation to these instruments are set out in the next section of the report.
3. The Committee also determined that in terms of its remit, it did not need to draw the Parliament's attention to the instruments at the end of the report. Additional details are noted in relation to the Act of Sederunt (Rules of the Court of Session 1994 and Sheriff Appeal Court Rules Amendment) (Miscellaneous) 2022 (SSI 2022/135).

Scrutiny of instruments under the Committee's remit: instruments drawn to the attention of the lead committee

Rural Support (Controls) (Coronavirus) (Scotland) Regulations 2022 (SSI 2022/107)

4. The instrument is made in an area formerly governed by EU law.
 5. The purpose of the instrument is to remove certain provisions of the Common Agricultural Policy in retained EU law which are considered no longer appropriate or workable for Scotland, and to make changes to the inspection requirements for rural support schemes, including in light of the impacts of the Coronavirus pandemic.
 6. In correspondence with the Scottish Government, the Committee highlighted difficulties that arise from there being parallel texts, or parallel versions, of some of the legislation which is being amended. This has arisen because the legislation which is being amended was brought over from EU law into domestic law early, on 31 January 2020, as it applies to direct payment support; and the same legislation was then brought over later, on 31 December 2020, as it applies to agricultural support. Between those two dates, the legislation was amended as it applies to direct payments, resulting in some of the provisions saying a different thing in relation to direct payments and to agricultural support respectively. In particular, the Committee identified that it could be clearer what the effect is of the substitution made by regulation 3(2) on the version of Article 24(4) of Commission Implementing Regulation (EU) No. 809/2014 as it applies to direct payment support and the version as it applies to agricultural support.
 7. In its response, the Scottish Government acknowledged that the background to the legislation currently being amended creates an extremely complex position for the user of the legislation.
 8. In its correspondence with the Scottish Government, the Committee also asked whether the title of the Commission Implementing Regulation which is being amended is missing in regulation 3(1), which gives the number but not the name. The Scottish Government agreed that the full title is missing and proposed to include provision in future regulations to insert the missing part of the title.
 9. A copy of the correspondence can be found in the **Annex**.
10. **The Committee draws this instrument to the attention of the Parliament on reporting ground (h) (meaning could be clearer) insofar as it could be clearer what the effect of the substitution made by regulation 3(2) is on the version of Article 24(4) of Commission Implementing Regulation (EU) No. 809/2014 as it applies to direct payment support and the version as it applies to agricultural support (rural development).**
 11. **The Committee agrees to write to the Scottish Government to invite it to consider legislating to make it easier for the user to understand the**

provisions of Commission Implementing Regulation (EU) No. 809/2014 which apply differently in relation to direct payment support and to agricultural support.

12. **The Committee notes the Scottish Government's proposal to include provision in a future SSI to insert the missing part of the title of Commission Implementing Regulation 809/2014 into regulation 3(1).**

National Health Service Superannuation and Pension Schemes (Miscellaneous Amendments) (Scotland) Regulations 2022 (SSI 2022/117)

13. The instrument makes temporary modifications, until 31 October 2022, to existing regulations to ensure that healthcare professionals who have recently retired can return to work and those who have already returned can increase their hours without there being a negative impact on their pension entitlements. It also amends existing pensions regulations to insert new tables reflecting revised employee contribution rates from 1 April 2022.
14. In correspondence with the Scottish Government, the Committee highlighted that regulation 1(3) provides that regulations 2 to 5 come into force immediately after the expiry of section 46 of the Coronavirus Act 2020. Section 46 expired at the end of 24 March 2022, which is before this instrument was made at 10.13 am the following day.
15. In its response, the Scottish Government explained that it was intended that regulations 2 to 5 have retrospective effect, but it was regrettable that this provision could be read instead as coming into force at the relevant date. In line with proper drafting practice, the instrument should have been made and then come into force, with separate provision made regarding retrospective effect.
16. **The Committee draws this instrument to the Parliament under the general reporting ground for a failure to follow proper drafting practice as provision should have been made for regulations 2 to 5 to have retrospective effect rather than coming into force prior to the instrument being made.**
17. The instrument also fails to comply with section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 which requires that instruments subject to the negative procedure are laid at least 28 days before they come into force, not counting recess periods of more than 4 days.
18. The instrument was laid on 25 March 2022 and came into force on 1 April 2022, except for regulations 2 to 5 as noted above.
19. In correspondence with the Presiding Officer, and subsequently with the Committee, the Scottish Government explained it had consulted on regulations reforming the member contribution structure, which were due to come into force on 1 April 2022, highlighting that HM Treasury had been involved in the consultation process on this instrument. However, during the consultation process, HM Treasury changed its position and on 18 February 2022 advised the Scottish Government that certain

reforms which had been proposed should be delayed until 1 October 2022 because of the impact they were set to have on lower and middle earning NHS staff in the current economic climate. Alternative provision was required to extend the current member contribution rates in lieu of the member contribution reform postponed by HM Treasury.

20. A copy of all correspondence can be found in the **Annex**.

21. **The Committee also draws this instrument to the attention of the Parliament under reporting ground (j) for failure to comply with laying requirements in accordance with the laying requirements in section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010.**

Non-Commercial Movement of Pet Animals (Scotland) Amendment Regulations 2022 (SSI 2022/131)

22. Annex IV of Council Regulation (EU) No. 576/2013 (retained EU law) sets out the validity requirements for rabies antibody titration tests on pet dogs, cats and ferrets moved into Great Britain. The instrument temporarily permits the use of an alternative and quicker rabies antibody titration test, known as the Enzyme-Linked Immunosorbent Assay (ELISA) test, which has a turnaround time of two weeks, compared to the previous Fluorescent Antibody Virus Neutralisation (FAVN) test, which has a turnaround time of two to three days.
23. The instrument was made on 8 April 2022 at 3.45pm and came into force on 9 April. It therefore breaches the 28-day rule in section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 which requires that instruments subject to the negative procedure are laid at least 28 days before they come into force, not counting recess periods of more than 4 days.
24. In correspondence with the Presiding Officer, the Scottish Government explained that a breach of the laying requirements had been necessary as urgent action was needed to relieve the pressures currently on quarantine facilities as a result of the high volume of pets entering the UK from Ukraine.
25. A copy of the correspondence can be found in the **Annex**.
26. Separately, the Committee noted that the new test provides quicker results than the test traditionally used in the past; two to three days as opposed to two weeks. Given the expedited timescale for bringing the instrument into force, the Committee agreed to highlight this change to the lead committee, which they may wish to take into account when considering this instrument.
27. **The Committee draws this instrument to the attention of the Parliament under reporting ground (j) for failure to comply with laying requirements in section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010.**
28. **The Committee is nevertheless content with the explanation provided by the Scottish Government for failure to comply with the laying requirements.**

No technical points raised

COVID-19 Recovery Committee

Health Protection (Coronavirus) (Requirements) (Scotland) Revocation (No. 2) Regulations 2022 (SSI 2022/133)

Criminal Justice Committee

Act of Sederunt (Rules of the Court of Session 1994 and Sheriff Appeal Court Rules Amendment) (Miscellaneous) 2022 (SSI 2022/135)

- The Committee welcomed that this instrument fulfils a commitment that was given by the Lord President's Private Office to rectify referencing errors in SSI 2021/452 and SSI 2021/468 in respect of the Sheriff Appeal Court Rules 2015 and 2021.

Health, Social Care and Sport Committee

National Health Service (General Medical Services Contracts and Primary Medical Services Section 17C Agreements) (Scotland) Amendment Regulations 2022 (SSI 2022/130)

Net Zero, Energy and Transport Committee

Traffic Signs Amendment (Scotland) Regulations and General Directions 2022 (SSI 2022/111)

Rural Affairs, Islands and Natural Environment Committee

Animal Health and Welfare (Scotland) Act 2006 (Consequential Provisions) Order 2022 (SSI 2022/Draft)

Annex

Rural Support (Controls) (Coronavirus) (Scotland) Regulations 2022 (SSI 2022/107)

On 5 April 2022, the Committee asked the Scottish Government:

The instrument amends the Horizontal Regulation (EUR 2013/1306) and Commission Implementing Regulation EUR 2014/809. These two Regulations, insofar as they relate to direct payment support (“DPS”), were incorporated into domestic law on exit day by the Direct Payments to Farmers (Legislative Continuity) Act 2020. Insofar as they relate to agricultural support (“AS”), they were incorporated into domestic law later, on IP completion day, under section 3 of the European Union (Withdrawal) Act 2018. However, the provisions of the Regulations are not identical for both DPS and AS purposes because they have been amended differently in relation to each type of support. This appears to result in there being parallel texts for DPS on the one hand and AS on the other for several of the provisions that this instrument amends (being the provisions amended by regulations 2(2), 3(2), 3(3) and 3(7) of the instrument). While the Agriculture (Payments) (Amendment, etc.) (EU Exit) Regulations 2020 (SI 2020/1445) makes provision in relation to how these two Regulations are to be treated on IP completion day, regulation 2(1)(a)(ii) of that SI appears to preserve, for DPS purposes, the amendments in relation to DPS that were made pre-IPCD, with the result appearing to be that there are still parallel texts for some provisions in relation to the two types of support.

It appears that two of the amendments made by the present instrument work on only one of the parallel texts. For example, regulation 3(2) of the instrument substitutes the second sub-paragraph of article 24(4) of EUR 2014/809, beginning “By way of derogation from...”. However, the sub-paragraph beginning with those words exists in article 24(4) only as it relates to DPS (having been inserted after exit day and before IPCD, when this article existed in domestic law only in relation to DPS, by SSI 2020/244). Regulation 2(1)(a) of SI 2020/1445 preserves the provision beginning “By way of derogation from...” but again only “insofar as it applies to the CAP direct payments schemes”. The substitution made by regulation 3(2) of the present instrument appears to be intended to apply both in relation to DPS and AS, given its content. However, since it would appear the substitution can operate only on the text as it applies to DPS, this could leave the position in relation to AS unamended, or in doubt.

It appears that the same issue arises in relation to the amendment made by regulation 3(7)(a)(i) to article 68 of EUR 2014/809. The issue does not arise in regulations 3(4), (5) and (6) of the instrument, because there are not parallel texts for the provisions they amend.

1. Please explain whether you consider that there are parallel texts in relation to DPS and in relation to AS for the provisions amended by regulations 2(2), 3(2), 3(3) and 3(7) of the instrument?
2. Please explain how the amendments made by regulations 3(2) and 3(7) work in relation to both DPS and AS?
3. Please explain whether and why it will be sufficiently clear to the reader which texts these amendments operate on? We note, for example, that Westlaw has interpreted the amendments made by regulations 2(2), 3(2), 3(3) and 3(7) of the instrument applying in each case to only one of the parallel texts.

4. Is the title of the Commission Implementing Regulation missing in reg 3(1)?
5. Please confirm whether any corrective action is proposed, and if so, what action and when.

On 14 April 2022 the Scottish Government responded:

1. Regulations (EU) No. 2013/1306 and 2014/809 (“the Regulations”) were incorporated into retained EU law, insofar as they apply to DPS, on exit day by the Direct Payments to Farmers (Legislative Continuity) Act 2020 and then amended during the course of 2020. The Regulations, insofar as they apply to AS, were incorporated into retained EU law on IP completion day by section 3 of the European Union (Withdrawal) Act 2018. This would have created the situation where two separate versions of the Regulations existed in retained EU law. Section 2 of the Agriculture (Payments) (Amendment, etc.) (EU Exit) Regulations 2020 (SI 2020/1445) addresses this and ensures that there is just one version of the Regulations in retained EU law. Section 2 of SI 2020/1445 provides that the Regulations are to be treated as being incorporated into retained EU law on IP completion day in the form they took on exit day but including any amendments made domestically in relation to DPS, and at the EU level in relation to AS, between exit day and IP completion day. The Regulations, in the form they took on exit day, contained some provision that applied just to DPS, some provision that applied just to AS and some provision that applied to both. While the amendments made domestically in relation to DPS, and at the EU level in relation to AS, between exit day and IP completion day are saved by section 2 of SI 2020/1445 this does not necessarily lead to the creation of parallel texts in the Regulations.

It is acknowledged that this creates an extremely complex position for the user of the legislation. The Scottish Government’s approach in general terms is to ensure that in drafting amendments it makes clear whether any provision applies only to DPS, only to AS or to both. There are a variety of drafting techniques (with associated advantages and disadvantages) that can be used to achieve this. The appropriate way of achieving the effect will depend on the context in each case. Given that there is one version of the Regulations, in general, the Scottish Government would try to avoid having parallel texts unless this was unavoidable.

In relation to the provisions amended by regulations 2(2), 3(2), 3(3) and 3(7) our view on the existence of parallel texts is as follows:

Regulation 2(2) – amending Article 75(2) of EUR 2013/1306

We do not consider there to be parallel text as such in Article 75(2). Article 75(2) applied to both DPS and AS. It was then amended separately, but identically, for DPS and AS to make it operable in domestic law. These amendments were made at different times, so far as relating to each form of support, in line with the incorporation of the Regulations into domestic law at different times. The amendment made by the Rural Support (Controls) (Coronavirus) (Scotland) Regulations 2021 (SSI 2021/72) has, in our view, been incorrectly displayed by Westlaw as parallel text applied just to DPS. There is nothing in the drafting of SSI 2021/72 to suggest that this amendment only applies to DPS and given that there was no parallel text in Article 75(2) at the point SSI 2021/72 was made and the amendment is inserted “at the end of Article 75(2)” our view is that the drafting intention is clear and this was not inserted as parallel text.

Regulation 3(2) – amending Article 24(4) in EUR 2014/809

A second subparagraph was inserted into Article 24(4) by the Direct Payments to Farmers (Controls) (Coronavirus) (Scotland) Regulations 2020 (SSI 2020/244). This created a specific derogation from the first sub-paragraph of 24(4) that applied to DPS but not AS. We consider, therefore, that there was text in Article 24(4) that applied to DPS only.

Regulation 3(3) – amending Article 26(4) in EUR 2014/809

The second subparagraph in Article 26(4) applies only to DPS and as such was omitted from EUR 2014/809, insofar as it applies to AS, on IP completion day by the Common Agricultural Policy (Financing, Management and Monitoring Supplementary Provisions) Miscellaneous Amendments (EU Exit) Regulations 2019 (SI 2019/765). This subparagraph had already been retained by the Direct Payments to Farmers (Legislative Continuity) Act 2020. An additional subparagraph was inserted at the end, applied to DPS, by SSI 2020/244. We consider, therefore, that there is some text in Article 26(4) that applies just to DPS.

Regulation 3(7) – amending Article 68(1) and (4) in EUR 2014/809

Article 68(1) has been amended differently as it applies to DPS and AS, in particular there are parallel text versions of the first subparagraph, which is being amended by this SSI. The other subparagraph in Article 68(1) which is being amended is identical in its application to DPS and AS. A provision was inserted into Article 68(4) by SSI 2020/244 which applied just to DPS.

2. The amendment made by regulation 3(2) substitutes the derogation that was previously inserted into Article 24(4) and applied just to DPS for claim year 2020 with a consolidated paragraph covering claim years 2020 and 2021 applied to DPS and AS. This means that a derogation now applies for DPS in claim year 2020 and for DPS and AS in claim year 2021.

The amendments being made to Article 68 of EUR 2014/809 by regulation 3(7) apply to both DPS and AS. The first subparagraph of Article 68(1) sets the cross compliance inspection rate. Cross compliance inspections are conducted on samples comprising all beneficiaries across DPS and rural development (a component of AS). Due to how these regulations were rolled over into retained EU law, as discussed above, there are parallel versions of the first subparagraph of Article 68(1) that set the cross compliance control rate.

The DPS ‘version’ of the subparagraph reads:

The competent control authority shall, with regard to the requirements and standards for which it is responsible, carry out on-the-spot checks on at least 1% of the total number of the beneficiaries receiving direct payments and the other beneficiaries referred to in Article 92 of Regulation (EU) No 2013/1306, as amended for the purpose of agricultural support.

The AS ‘version’ of the subparagraph reads:

The competent control authority shall, with regard to the requirements and standards for which it is responsible, carry out on-the-spot checks on at least 1% of the total number of the beneficiaries receiving annual premia referred to in Article 92 of Regulation (EU) No 2013/1306 and the other beneficiaries receiving direct payment support.

As the cross compliance rate is selected across DPS and rural development beneficiaries you will note that the text of the parallel versions are mirror images of each other, i.e. both

set the control rate as 1% of rural development beneficiaries (beneficiaries receiving annual premia referred to in Article 92 of Regulation (EU) No 2013/1306) and beneficiaries of DPS.

Our amendment in reg 3(7)(a)(i) reduces the control rate in the AS parallel text down to 0.5% for claim year 2021. Our amendment in reg 3(7)(a)(ii) extends the existing derogation that applies to DPS that brought the control rate down to 0.5% for claim year 2020 to claim year 2021. The effect of this is that in both parallel versions of Art 68(1) the cross compliance control rate is reduced to 0.5% for claim year 2021.

There is no parallel text in respect of the other provision in Article 68(1) being amended by regulation 3(7)(a)(iii) as it is identical in its application to DPS and AS. While there is provision in Article 68(4) that applies only to DPS our drafting intention in regulation 3(7)(b) is clear that the entirety of Article 68(4) should be omitted. We note that Westlaw has correctly applied the amendments made by regulation 3(7)(a)(iii) and 3(7)(b) in EUR 2014/809.

3. Whilst the text of the provision being inserted in the amendment being made by regulation 3(2) is a substitution of a subparagraph that previously applied only to DPS we consider that the legislative intent is clear given that the substituted provision specifically applies to both DPS and AS.

For the reasons explained above in response to question 2 we are of the view that the amendments made by regulation 3(7) are sufficiently clear as to the texts they operate on. We have amended both of the parallel texts in Article 68(1) to reduce the cross compliance control rate for claim year 2021 to 0.5%, there is no parallel text in respect of the other subparagraph in Article 68(1) being amended and we have omitted the entirety of Article 68(4).

We will be liaising with Westlaw in relation to the amendments that we consider are incorrectly displayed. We will also liaise with them to discuss how the position in relation to this complex post EU Exit legislation can be made clearer to the reader through appropriate signposting/footnoting.

4. Yes the full title of Commission Implementing Regulation 2014/809 is missing in reg 3(1).

5. There is no corrective action proposed at this time. However, in respect of the point raised in question 4, we propose to include provision in a future SSI to insert the missing part of the title of Commission Implementing Regulation 2014/809 into reg 3(1).

National Health Service Superannuation and Pension Schemes (Miscellaneous Amendments) (Scotland) Regulations 2022 (SSI 2022/117)

On 6 April 2022 the Scottish Government was asked:

Regulation 1(3) of this instrument provides that regulations 2 to 5 come into force immediately after the expiry of section 46 of the Coronavirus Act 2020. Section 89(1) of the 2020 Act provides that section 46 expires at the end of the period of 2 years beginning with the day on which it is passed. The expiry date of section 46 was not amended by the Coronavirus Act 2020 (Alteration of Expiry Date) (Scotland) Regulations 2022 (SSI 2022/40).

1. Please explain whether you consider that section 46 of the 2020 Act expired at the

end of 24 March 2022.

2. This instrument was made at 10:13AM on 25 March 2022. Both the Superannuation Act 1972 and the Public Service Pension Act 2013 contain provision enabling pension scheme regulations to have retrospective effect (see e.g. section 12(1) of the 1972 Act and section 3(3)(b) of the 2013 Act). If section 46 expired at the end of 24 March 2022, please explain whether, and if so why, the Scottish Government considers that regulation 1(2) and (3) of the instrument (under the heading "Citation and commencement") competently, and in line with proper drafting practice, have the effect of bringing regulations 2 to 5 into force approximately 10 hours before the instrument was made, as opposed to commencing the instrument after it is made and providing separately that regulations 2 to 5 have retrospective effect prior to the instrument being made – see, for example, regulation 1(2) and (3) of the National Health Service Superannuation and Pension Schemes (Miscellaneous Amendments) (Scotland) Regulations 2020 (SSI 2020/30).
3. The preamble to this instrument narrates that it is made with the consent of the Treasury as required by section 10(1) of the 1972 Act and section 3(5) of the 2013 Act. The letter to the Presiding Officer dated 25 March 2022 explains that the Scottish Government had been consulting on amending regulations which sought to reform the member contribution structure from 1 April 2022 and that consultation closed on 27 February 2022. However, a letter from HM Treasury to the Chief Secretary to the Treasury of 18 February 2022 indicated that these reforms should be delayed until 1 October 2022. Please explain why consent from HM Treasury was not sought earlier to allow time for the Scottish Government to respond to any suggested changes and still afford Parliament the full 28 days to consider this instrument as provided for in section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010.
4. Given the explanation in the accompanying letter to the Presiding Officer that HM Treasury directed that the reforms should be delayed until 1 October 2022, please confirm whether, and if so why, regulation 2 achieves the policy intention insofar as it provides that the modifications in Part 2 apply until the end of 31 October 2022, and whether HM Treasury consents to this.
5. In regulation 7(a) no reference is made to the paragraph in regulation 30 of the National Health Service Pension Scheme (Scotland) Regulations 2015 that the instrument amends. Please confirm whether there is an error, and whether reference should have been made to paragraph (3) in addition to sub-paragraph (g).
6. Please confirm whether any corrective action is proposed, and if so, what action and when.

On 14 April 2022 the Scottish Government responded:

1. It is considered that section 46 of the 2020 Act expired at the end of 24 March 2022.
2. As noted, section 12(1) of the Superannuation Act 1972 provides that regulations making provision for the superannuation of persons engaged in health services may be framed so as to have effect as from a date earlier than the making of the regulations, and section 3(3)(b) of the Public Service Pensions Act 2013 provides that such regulations may make retrospective provision. The intention was for the provision in regulations 2 to 5 of this instrument, which temporarily modifies certain provisions in NHS pension scheme regulations to apply until 31 October 2022, to have

retrospective effect in so far as the time of making of this instrument was after the expiry of section 46 of the Coronavirus Act 2020. It is regretted that the drafting of regulation 1(3) of this instrument may be read as providing that regulations 2 to 5 come into force, rather than take effect, at the relevant time.

3. As the letter to the Presiding Officer sets out, the consultation on the amending Regulations which closed on 27 February 2022 was carried out with the consent of HM Treasury. However, HMT then changed their position in a letter from the Chief Secretary to the Treasury of 18 February 2022 which expressed the view that the member contribution reforms which had been proposed should be delayed until 1 October 2022. Consent was then given to this instrument by HMT on 21 March 2022.
4. The view expressed by HMT that member contribution reforms should be delayed until 1 October 2022 relates to the provision made by regulations 6 to 8 of this instrument, which set out member contribution rates. The effect of regulations 7 and 8, as made, is to extend the current member contribution rates, and provide powers to continue to deduct member contributions, in lieu of the member contribution reform postponed by HMT. Regulations 7 and 8 extend those rates from 1 April 2022 and allows the inserted contribution table to apply until the reforms are agreed by HMT and stakeholders.
5. In regulation 7(a), reference should have been made to paragraph (3) of regulation 30, rather than to sub-paragraph (g) only. This omission is regretted but it is considered that the meaning of this provision is clear, on the basis that neither paragraph (1) or (2) of regulation 30 include a sub-paragraph (g). It is noted that in the current version of SSI 2015/94 on Westlaw, new sub-paragraph (h) has been inserted at the appropriate place, after sub-paragraph 30(3)(g).
6. No corrective action is proposed.

On 25 March, the Scottish Government wrote to the Presiding Officer:

The above named SSI [SSI 2022/117] was made by the Scottish Ministers under sections 10 and 12 of the Superannuation Act 1972, and schedule 2, and schedule 3, of the Public Service Pensions Act 2013. This instrument is being laid before the Scottish Parliament today, 25 March 2022 and comes into force on 1 April 2022, with the exception of regulations 2 to 5 which come into force immediately after the expiry of section 46 of the Coronavirus Act 2020. 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. This instrument amends the provisions of the National Health Service Pension Scheme (Scotland) Regulations 2015 (“the 2015 Regulations”) relating to employee contributions to the NHS Pension Scheme (Scotland) and inserts new tables reflecting revised employee contribution rates from 1 April 2022. The tiered contribution rates are revised annually to reflect annual NHS pay awards. This is in line with policy established in 2015 and ensures individual scheme members are not being moved into a higher contribution rate banding as a result of the pay award and end up with a reduction in their take-home pay.

Further, this instrument makes temporary modifications to the National Health Service Superannuation Scheme (Scotland) Regulations 2011, the National Health Service Superannuation Scheme (2008 Section) (Scotland) Regulations 2013 and the 2015

Regulations. The modifications have similar effect to section 46 of the Coronavirus Act 2020 (“the 2020 Act”) following the expiry of that section, until 31 October 2022.

Section 46 of the 2020 Act suspends certain rules that apply in the NHS Pension Scheme in Scotland so that NHS staff who have recently retired can return to work and those who have already returned can increase their hours without there being a negative impact on their pension entitlements. To assist the health service response to COVID-19, it is desirable to ensure that those rules do not act as a disincentive for NHS staff who wish to re-enter the workforce.

As public service pensions policy is executively devolved to the Scottish Government, this instrument, which amends member contribution rates in the NHS Pension Scheme (Scotland) Regulations, requires the consent of HM Treasury. With the agreement of HM Treasury, the Scottish Government had been consulting on amending regulations which sought to reform the member contribution structure from 1 April 2022, the consultation closed on 27 February 2022. However, because of the impact these reforms were set to have on lower and middle earning NHS staff in the current economic climate, HM Treasury directed in a letter from the Chief Secretary to the Treasury of 18 February 2022, that these reforms should be delayed until 1 October 2022. Accordingly, the Scottish Government are delaying reform of the contribution structure until October 2022 and have withdrawn the original SSI which was previously consulted on. However, the existing powers to deduct member pension contributions expire in regulation on 31 March 2022, therefore, we need to bring forward and consult on amending Regulations, in short time, in order to extend the current contribution structure from 1 April 2022. The late direction from HM Treasury on the delayed implementation meant that we had to withdraw the original instrument and new instrument could not be made and laid sooner.

Consequently, I must regrettably inform you that this instrument will breach the 28-day rule.

Non-Commercial Movement of Pet Animals (Scotland) Amendment Regulations 2022 (SSI 2022/131)

On 8 April, the Scottish Government wrote to the Presiding Officer:

The Non-Commercial Movement of Pet Animals (Scotland) Amendment Regulations 2022, SSI 2022/131 was made by the Scottish Ministers under Articles 38 and 39(6) of Regulation (EU) 576/2013 of the European Parliament and of the Council on the non-commercial movement of pet animals on Friday 8 April 2022 and laid before the Scottish Parliament on the same day. It comes into force on Saturday 9 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.

It is anticipated that the UK will see an influx of persons displaced by the conflict in Ukraine over the coming days and weeks, many of whom will have pets. Current estimates suggest that up to 1,000 - 2,000 pets may arrive in GB from Ukraine, and that the majority of these animals will not be compliant with the entry requirements. Great Britain has run out of official approved quarantine spaces and plans are already underway to try to expand existing space but this will take time. As part of the current rabies requirements for high risk countries like Ukraine , there is one type of antibody titre test that can be used for animals entering GB to authorise their release from quarantine if the animal is non-

compliant on entry. This test (the Fluorescent Antibody Virus Neutralisation (FAVN) testⁱ) is currently used for the 30 day titre test and has a turnaround time of up to two weeks. The SSI will give Scottish Ministers the ability to authorise an alternative antibody titre test (a specific form of an enzyme-linked immunosorbent assay (ELISA) test), which has a turnaround of 2-3 days. The purpose of this test will be to release quarantine spaces sooner than if the animals had had the FAVN test and reduce time animals need spend in quarantine. We therefore want to be able to use the ELISA test for a time limited period and where Scottish Ministers authorise its use.

Given the immediate pressures on existing quarantine facilities caused by these unprecedented circumstances, it is necessary to make this change in the law urgently so that the alternative test is available for use as soon as possible to enable Scottish Ministers to take this alternative, quicker option to identify those pets that may safely be released from quarantine, and, where animals require to remain in quarantine, to allow an assessment to be made based on risk where they were placed. This will immediately help to reduce the overall burden on quarantine spaces and enable people to be reunited with their pets earlier.

Similar Regulations have been laid for England² and came into force on Tuesday 5 April 2022 and the Welsh Government is planning on laying its Regulations to a similar timeframe to the Scottish Government.

ⁱ Fluorescent Antibody Virus Neutralisation (FAVN) Tests ([defra.gov.uk](https://www.gov.uk/government/collections/fluorescent-antibody-virus-neutralisation-favn-tests))

