EXPLANATORY MEMORANDUM TO

THE FOOTBALL SPECTATORS (PRESCRIPTION) ORDER 2022

2022 No. 617

1. Introduction

1.1 This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The instrument revokes and consolidates the content of the Football Spectators (Prescription) Order 2004 (S.I. 2004/2409) ("the 2004 Order") and its subsequent amendment orders.

2.2 The instrument widens the definition of a regulated football match for the purposes of Part II of the Football Spectators Act 1989 ("the 1989 Act") to include matches in which one or both teams represent a club that is a member of the FA Women's Super League or the FA Women's Championship.

2.3 The instrument also defines "regulated football organisation" and "prescribed connection with a regulated football organisation" for the purposes of Part II of, and Schedule 1 to, the 1989 Act.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales.

4.2 The territorial application of this instrument is England and Wales.

5. European Convention on Human Rights

5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

6.1 Part II of the 1989 Act relates to regulated football matches and provides the framework for football banning orders ("FBOs"). Various matters are prescribed, by Order made by the Secretary of State, for the purposes of that Part. This instrument consolidates the previous prescription order and its subsequent amendment orders, in one set of regulations. It consequently revokes the following legislation The Football Spectators (Prescription) Order 2004 (S.I. 2004/2409), The Football Spectators (Prescription) Amendment Order 2006 (S.I. 2006/761), The Football Spectators (Prescription) (Amendment) Order 2010 (S.I. 2010/584), and The Football Spectators (Prescription) (Amendment) Order 2013 (S.I. 2013/1709).

6.2 In addition, the instrument defines "football organisations" and "prescribed connections (relationships) to a football organisation" (Articles 4 and 5) for the purposes of Part II of, and Schedule 1 to, the 1989 Act. These concepts relate to the circumstances in which a court may make a declaration of relevance (see Schedule 1 and section 23 of the 1989 Act) in respect of remote (including online) hate crime offences with a football connection or context, introduced (by amendment to the 1989 Act) in the Police, Crime, Sentencing and Courts Act 2022. The effect is that a court can impose a FBO under section 14A, following conviction for such offences that do not relate to specific football matches or do not take place within 24 hours of a regulated football match, but nevertheless relate to football as they relate to a football organisation (such as the Premier League, the England National Team or an elite football team) or to a person connected to such an organisation (such as a player, manager, match official etc.)

6.3 The instrument also amends the definition of a "regulated football match" for the purposes of Part II of the 1989 Act to include elite women's football, that is any match (in England and Wales or overseas) involving a team that is a member of the FA Women's Super League and FA Women's Championship. It will be possible for a court to impose a FBO against a person convicted of football-related offences at such matches. Persons subject to a FBO now or in the future will be prevented from attending these matches.

7. Policy background

What is being done and why?

7.1 The Police, Crime, Sentencing and Courts Act 2022 adds relevant communications offences with a hate element, such as racist or homophobic hate speech, to Schedule 1 to the 1989 Act for the purposes of banning orders on conviction. The effect of a football banning order is to prohibit attendance at the matches in England and Wales prescribed by this instrument (Article 3(2) and (3)) and to report to a police station when required to do so by the enforcing authority on the occasion of overseas matches described in this instrument (Article 3(4)).

7.2 Due to the potential for the committing of online and remote hate offences at any time, the 2022 Act did not require close geographic and temporal proximity for such offences within the schedule of relevant offences; specifically, it did not require the offence to have occurred at, on a journey to, or within 24 hours of, a regulated football match. Instead, to be relevant offences the court must make a declaration that the offence related to a regulated football match, a relevant football organisation or a person whom the defendant knew or believed to have a prescribed connection to such offences. The 2022 Act establishes the power to prescribe these concepts by secondary legislation, to enable hate offences which are football related to be properly covered by FBOs.

7.3 The relevant football organisations are the Football Association Limited (the Football Association Women's Super League and Football Association Women's Championship are run by the FAL), the Football Association Premier League Limited, the Football League Limited, the Football Conference Limited, the Football Association of Wales Limited (the Cymru Premier League is run by the FAWL). It also includes a club (which includes a team representing such a club) which is a member of the Football League, the Football Association Premier League, the Football Association Women's Super League, the Football Association Women's

Championship, the Football Conference or the Cymru Premier League. Finally, it includes the England and Wales national teams. The effect is that remote hate crimes relating to the elite leagues and/or the bodies running such leagues, elite football teams or clubs or the England or Wales national teams will be captured by the FBO regime.

7.4 A person with a prescribed connection (i.e. a relationship) to a football organisation includes persons who are (or in the six months before the date of the offence were) players, managers, coaches or other member of the matchday pitchside staff of a relevant team, match officials and officers of a club which is a regulated football organisation. It also includes a person who is (or in the 14 days before the date of the offence was) a journalist or other member of broadcast staff covering a regulated football match involving a relevant team, or otherwise reporting or commentating on a relevant team or player of such team. A relevant team is a team representing a club which is in the elite football leagues (as set out above).

7.5 The effect of this is to capture remote and online hate offences which relate to football but occur in a wider timeframe. For example, where they result in conviction for an offence, a racist social media post against a player sent three weeks after a match or a homophobic tweet against a football pundit sent the day after their commentary on a Premier League match could be captured.

7.6 Matches involving teams from elite women's football competitions are being added for coverage of FBO legislation because of the significant increase in match attendances and media coverage. This has increased the risk of disorderly behaviour at these matches. Previously women's international football matches and club matches against overseas opposition (i.e. in the UEFA Women's Champions League) in England and Wales were covered by the designation but such matches played outside of England and Wales were not covered. This gives parity of coverage of the Act to elite men's and women's football.

7.7 Finally, as set out below, the previous designation order and relevant amending orders are being revoked and their content consolidated for ease of navigation of the legislation by the public and relevant enforcing bodies.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 This instrument consolidates and revokes The Football Spectators (Prescription) Order 2004, The Football Spectators (Prescription) (Amendment) Order 2006, The Football Spectators (Prescription) (Amendment) Order 2010 and The Football Spectators (Prescription) (Amendment) Order 2013.

10. Consultation outcome

10.1 Consultation on the inclusion of matches involving teams from the FA Women's Super League and FA Women's Championship within this instrument was undertaken with the Football Association, who operate these competitions, and with senior police. Consultation on coverage of remote and online hate offences for the purposes of

FBOs took place with stakeholder agencies (police, other criminal justice agencies) before introduction of relevant provisions in the 2022 Act.

11. Guidance

11.1 When this Order is made the Football Banning Orders Authority will notify all individuals subject to football banning orders which types of football matches are now covered by their banning order. Home Office will issue guidance to stakeholders, including police and the football authorities, advising them of the prescription of football organisations and persons with prescribed connections and of the amended coverage.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 A full Impact Assessment has not been prepared for this instrument because there is no significant impact on the private or public sector.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 This legislation will be monitored internally by the Home Office. Should the nature or level of public order risk change, the legislation may be amended accordingly.

15. Contact

15.1 Martin Gooday at the Home Office email: martin.gooday@homeoffice.gov.uk can be contacted with any queries regarding the instrument.

15.2 Paul Regan, Deputy Director for the Neighbourhood Crime Unit, at the Home Office can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Minister for Crime and Policing at the Home Office can confirm that this Explanatory Memorandum meets the required standard.