Subordinate Legislation Committee

Remit and membership

Remit:

The remit of the Subordinate Legislation Committee is to consider and report on—

(a) any—

(i) subordinate legislation laid before the Parliament;

(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; and

(f) proposed changes to the procedure to which subordinate legislation laid before the Parliament is subject.

(Standing Orders of the Scottish Parliament, Rule 6.11)

Membership:

Chic Brodie
Nigel Don (Convener)
The Committee reports to the Parliament as follows—

1. At its meeting on 24 April 2012, the Committee agreed to draw the attention of the Parliament to the following instruments—

   Firemen’s Pension Scheme Amendment (Scotland) Order 2012 (SSI 2012/106); and

   Firefighters’ Pension Scheme (Scotland) Amendment Order 2012 (SSI 2012/107).

2. The Committee’s recommendations in relation to those instruments are set out below.

3. The instruments that the Committee determined it did not need to draw the Parliament’s attention to are set out at the end of this report.
POINTS RAISED: INSTRUMENTS SUBJECT TO NEGATIVE PROCEDURE

Firemen’s Pension Scheme Amendment (Scotland) Order 2012 (SSI 2012/106) (Local Government and Regeneration Committee)

4. The Order makes amendments to the Firefighters’ Pension Scheme, as contained in the Firemen’s Pension Scheme Order 1992, as amended.

5. The Order was laid at the same time as the Firefighters’ Pension Scheme (Scotland) Amendment Order 2012 (SSI 2012/107). The purpose of both Orders is to introduce amendments to reflect increases in member contribution rates to apply from 1 April 2012.

6. The Order is subject to negative procedure and came into force on 1 April 2012. It was laid in Parliament on 30 March 2012, which breaches the “28-day rule” for negative procedure instruments.

7. Section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 sets out the rule that a Scottish statutory instrument which is subject to negative procedure must be laid before Parliament as soon as practicable after it is made, and in any event at least 28 days before the instrument comes into force.

8. A failure to comply with section 28(2) does not render the instrument invalid, but the Scottish Government must explain to the Presiding Officer why the laying requirements have not been complied with.

9. The Scottish Government’s letter to the Presiding Officer on this instrument sets out why it was appropriate not to comply with the 28 day rule. The letter is reproduced in Appendix 1.

10. The reasons set out in the letter apply to both this Order and SSI 2012/107. In considering those reasons, the Committee sought further clarification from the Government. This correspondence is reproduced in Appendix 3.

11. In short, the revised contribution rates for the pension schemes were communicated to the Scottish Government on 26 March 2012, as soon as an agreement was reached between the UK Government Department for Communities and Local Government and the firefighters’ trade unions, which occurred earlier on that day. The instrument was then expedited and laid before the Parliament on 30 March. The Committee considers that, with this clarification, the reasons provided for the failure to comply with the 28-day rule are acceptable.

12. The Committee also sought clarification from the Scottish Government on what appeared to be two drafting errors—namely, that article 3(a) (and the explanatory note) mention the new Part A1 of Schedule 8 to the principal 1992 Order but article 4 inserts a new Part 1A on pension contributions; and that the text in article 1(3) should be the heading to article 2.

13. In its response, the Scottish Government acknowledges the two drafting errors and proposes to rectify them by correction slip. It also contends that, despite the errors, the intended meaning in the instrument is clear. The Committee’s questions and the Scottish Government’s response are in Appendix 2.
14. The Committee accepts the Scottish Government’s explanation and that it proposes to resolve these drafting errors by correction slip.

15. The Committee therefore draws the instrument to the Parliament's attention under reporting ground (j), as there has been a failure to lay the instrument at least 28 days before it comes into force as required by section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010.

16. In doing so, the Committee finds the explanation provided by the Scottish Government for this failure to be acceptable. The response to the Committee has clarified that the revised contribution rates for the Firefighters’ Schemes were communicated to the Scottish Government on 26 March 2012, as soon as they had been agreed between the UK Government Department for Communities and Local Government and the firefighters’ trade unions, which occurred earlier on that day. The instrument was then expedited and laid before the Parliament on 30 March.

17. The Committee also draws the instrument to the Parliament’s attention on the general reporting ground, because it contains the following drafting errors. First, article 4 inserts a new Part 1A of Schedule 8 to the Firemen’s Pension Scheme Order 1992 on pension contributions. It was intended to insert a new Part A1 (before Part 1), as stated in article 3(a) of the Order. Secondly, the text in article 1(3) should be the heading to article 2.

18. The Committee notes that the Scottish Government has acknowledged these errors and proposes to resolve them by correction slip.
Firefighters’ Pension Scheme (Scotland) Amendment Order 2012 (SSI 2012/107) (Local Government and Regeneration Committee)

19. The Order makes amendments to the New Firefighters’ Pension Scheme, as contained in the Firefighters’ Pension Scheme (Scotland) Order 2007.

20. As noted above, the Order was laid at the same time as the Firemen’s Pension Scheme Amendment (Scotland) Order 2012 (SSI 2012/106). The purpose of both Orders is to introduce amendments to reflect increases in member contribution rates to apply from 1 April 2012.

21. The Order is subject to negative procedure and came into force on 1 April 2012. It was laid in Parliament on 30 March 2012, which breaches the “28-day rule” for negative procedure instruments.

22. Section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 sets out the rule that a Scottish statutory instrument which is subject to negative procedure must be laid before Parliament as soon as practicable after it is made, and in any event at least 28 days before the instrument comes into force.

23. A failure to comply with section 28(2) does not render the instrument invalid, but the Scottish Government must explain to the Presiding Officer why the laying requirements have not been complied with.

24. The Scottish Government’s letter to the Presiding Officer on this instrument sets out why it was appropriate not to comply with the 28 day rule. The letter is reproduced in Appendix 1.

25. As noted above, the reasons set out in the letter apply to both this Order and SSI 2012/106. In considering those reasons, the Committee sought further clarification from the Government. This correspondence is reproduced in Appendix 3.

26. In short, the revised contribution rates for the pension schemes were communicated to the Scottish Government on 26 March 2012, as soon as an agreement was reached between the UK Government Department for Communities and Local Government and the firefighters’ trade unions, which occurred earlier on that day. The instrument was then expedited and laid before the Parliament on 30 March. The Committee considers that, with this clarification, the reasons provided for the failure to comply with the 28-day rule are acceptable.

27. The Committee therefore draws the instrument to the Parliament’s attention under reporting ground (j), as there has been a failure to lay the instrument at least 28 days before it comes into force as required by section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010.

28. In doing so, the Committee finds the explanation provided by the Scottish Government for this failure to be acceptable. The response to the Committee has clarified that the revised contribution rates for the Firefighters’ Schemes were communicated to the Scottish Government on 26 March 2012, as soon as they had been agreed between the UK
Government Department for Communities and Local Government and the firefighters’ trade unions, which occurred earlier on that day. The instrument was then expedited and laid before the Parliament on 30 March.
NO POINTS RAISED

29. At its meeting on 24 April 2012, the Committee also considered the following draft instruments and determined that it did not need to draw the attention of the Parliament to the draft instruments on any grounds within its remit:

Local Government and Regeneration Committee

Public Services Reform (Planning) (Pre-application consultation) (Scotland) Order 2012 and proposed Explanatory Document (SG/2012/52)

Public Services Reform (Planning) (Local Review Procedure) (Scotland) Order 2012 and proposed Explanatory Document (SG/2012/53)
APPENDIX 1

Firemen’s Pension Scheme Amendment (Scotland) Order 2012 (SSI 2012/106) and Firefighters’ Pension Scheme (Scotland) Amendment Order 2012 (SSI 2012/107)

Breach of laying requirements: letter to Presiding Officer

The above instruments were made on 29 March 2012 under respectively sections 26(1) and (5) of the Fire Services Act 1947 and sections 34 and 60 of the Fire and Rescue Services Act 2004. They are being laid before the Scottish Parliament on 30 March 2012 and come into force on 1 April 2012.

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 instruments less than 28 days before they are brought into force.

These instruments fix the pension contribution rates for firefighters in Scotland under two public sector schemes applicable to Scotland. These schemes are reserved under the Scotland Act 1998, although the making of subordinate legislation in relation to the schemes is executively devolved.

On 28 October 2010 the UK Government set out its intent on delivering savings of £2.8bn per annum across the public sector pension schemes by 2014/15 by increasing employee contribution rates by an average of 3.25% of pay in three annual increments starting April 2012. Despite Scottish Ministers’ principled opposition to increasing employee contributions at this time and in this way the UK Government has refused to change its policy and indicated that if similar increases were not introduced to the schemes in Scotland then the Scottish block grant and hence budget would be adjusted accordingly.

Scottish Ministers sought suitable alternatives with key stakeholders but this has not been possible so reluctantly decided to apply the increases in the NHS, Teachers, Police and Firefighter schemes from 1 April 2012. In ensuring that affected Scottish pension scheme members paid no more in increased contributions than their UK counterparts the rates applied by UK Government Departments are being introduced to the schemes in Scotland. Whilst the UK rates for the NHS, Teachers and Police schemes were confirmed to allow the subsequent statutory instruments for the Scottish schemes to be laid within the necessary Parliamentary time limits the revised rates for the firefighters’ schemes in England were only confirmed to the Scottish Government on 26 March by the Department of Communities and Local Government.

These instruments have been made as soon as possible after the details of the contribution rates for England were communicated to the Scottish Government and in line with contribution increases to the other affected schemes must come into force on 1 April 2012. I should finally add that this is the first occasion that SPPA has had to lay late in respect of any of the five scheme it has legislative
responsibility for and are making this request due to the unavoidable circumstances outlined above.
APPENDIX 2

Firemen’s Pension Scheme Amendment (Scotland) Order 2012
(SSI 2012/106)

On 11 April 2012, the Scottish Government was asked:

(1) Would the Scottish Government agree there are drafting errors in respect that-

(a) article 3(a) (and the explanatory note) introduce the new Part A1 of Schedule 8
to the principal 1992 Order, but article 4 inserts a new Part 1A on pension
contributions. Is the Part 1A heading in article 4 the error, as the intention appears
to be to insert the new Part A1 before Part 1, and what is the effect?

(b) the text in article 1(3) should be the heading to article 2.

(2) If the Scottish Government agrees these are errors, is it proposed to correct
them by an amendment?

The Scottish Government responded as follows:

The Scottish Government accepts that the reference in article 3(a) to Part A1 is
correct as is the reference in the Explanatory Note and that in article 4 Part A1 has
been reversed to Part 1A. This is an obvious typing error and it is thought there is
no room for dubiety about the legal meaning. Similarly the text in article 1(3) which
is not a proposition is obviously the heading of article 3. The Scottish Government
intends to use a correction slip to rectify these errors. The Scottish Government is
also trying to ensure that further such errors do not occur.
APPENDIX 3

Firefighters’ Pension Scheme (Scotland) Amendment Order 2012 (SSI 2012/107)

On 12 April 2012, the Scottish Government was asked:

The letter from the Scottish Public Pensions Agency to the Presiding Officer explains that the 28 day rule contained in section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 has not been complied with in relation to this Order and the Firemen’s Pension Scheme Amendment (Scotland) Order 2012, because “while the UK contribution rates for the NHS, Teachers and Police schemes were confirmed to allow the subsequent statutory instruments for the Scottish schemes to be laid within the necessary Parliamentary time limits, the revised rates for the Firefighters’ schemes in England were only confirmed to the Scottish Government on 26 March by the Department of Communities and Local Government.”

Could the Scottish Government clarify why the revised contribution rates for the Firefighters’ schemes could only be confirmed on 26 March, requiring the breach of the rule?

The Scottish Government responded as follows:

The revised contribution rates for the Firefighters’ schemes were communicated to the Scottish Government as soon as they had been agreed between the Communities and Local Government Department of HMG and the firefighters’ trade unions which was earlier on day of 26 March 2012.
Members who would like a printed copy of this *Numbered Report* to be forwarded to them should give notice at the Document Supply Centre.