Delegated Powers and Law Reform Committee

Remit and membership

Remit:

1. The remit of the Delegated Powers and Law Reform Committee is to consider and report on—
   (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; and
   (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.

Membership:

Nigel Don (Convener)
John Mason (Deputy Convener)
Margaret McCulloch
John Scott
Stewart Stevenson
Committee Clerking Team:

Clerk to the Committee
Euan Donald

Assistant Clerk
Elizabeth Anderson

Support Manager
Daren Pratt
Delegated Powers and Law Reform Committee

10th Report, 2015 (Session 4)

Subordinate Legislation

The Committee reports to the Parliament as follows—

1. At its meeting on 3 February 2015, the Committee agreed to draw the attention of the Parliament to the following instrument—

   Firefighters’ Pension Scheme (Consequential Provisions) (Scotland) Regulations 2015 [draft].

2. The Committee’s recommendations in relation to the above instrument are set out below.

3. The Committee determined that it did not need to draw the Parliament’s attention to the instruments which are set out at the end of this report.
4. These regulations make consequential provision under the Public Service Pensions Act 2013 (“the 2013 Act”) in relation to the new firefighters’ pension scheme. The regulations will come into force alongside the Firefighters’ Pension Scheme (Scotland) Regulations 2015 (“new scheme regulations”) on 1 April 2015.

5. In considering the instrument, the Committee asked the Scottish Government for an explanation of certain matters. The correspondence is reproduced at the Annex.

6. Regulation 13 of this instrument makes reference to an “upper tier ill-health pension”. This term is not defined in the regulations or in the new scheme regulations. The new scheme regulations refer instead to (and define) a “higher tier ill-health pension”. The Committee considers that there is a lack of consistency in the terminology used as between the two instruments and a resultant lack of clarity as to the meaning of the term “upper tier ill-health pension” as used in regulation 13. The Committee considers that regulation 13 should use the same terminology as the new scheme regulations. The Committee observes that this could have been avoided had the new scheme regulations been laid prior to, or at the same time as, these consequential regulations.

7. The Committee accordingly draws the instrument to the attention of the Parliament under reporting ground (h) as the meaning of regulation 13 could be clearer. Regulation 13 refers to an “upper tier ill-health pension”. That term is not defined in the regulations or in the Firefighters’ Pension Scheme (Scotland) Regulations 2015, which were laid in Parliament after the present regulations and in respect of which the present regulations make consequential provision. Those later regulations refer instead to (and define) a “higher tier ill-health pension”. The terminology used in the present instrument is therefore inconsistent with that used in the instrument in respect of which it makes consequential provision.

8. The Committee also agreed to write to the lead Committee, the Minister for Parliamentary Business and the Deputy First Minister to highlight the following issue. These regulations were laid before the Parliament on 14 January 2015. The regulations containing the new firefighters' pension scheme were subsequently laid on 26 January 2015. The lack of clarity in regulation 13 could have been avoided had the new scheme regulations been laid prior to, or at the same time as, the present regulations. The commitment given by the Minister for Parliamentary Business earlier this session to the effect that the Scottish Government would avoid staggering the laying of related instruments where possible has not been met in this case.
NO POINTS RAISED

9. At its meeting on 3 February 2015, the Committee considered the following instruments. The Committee determined that it did not need to draw the attention of the Parliament to any of the instruments on any grounds within its remit:

**Equal Opportunities**

Marriage and Civil Partnership (Scotland) Act 2014 (Commencement No. 4 and Savings Provisions) Order 2015 (SSI 2015/14 (C.3));

**Finance**

National Health Service Pension Scheme (Consequential Provisions) (Scotland) Regulations 2015 [draft];

Police Pensions (Consequential Provisions) (Scotland) Regulations 2015 [draft];

Teachers’ Pension Scheme (Consequential Provisions) (Scotland) Regulations 2015 [draft];

Land and Buildings Transaction Tax (Sub-sale Development Relief and Multiple Dwellings Relief) (Scotland) Order 2015 [draft].

Revenue Scotland (First Planning Period) Order 2015 (SSI 2015/16).

Landfill Tax (Scotland) Act 2014 (Commencement No. 2) Order 2015 (SSI 2015/17 (C.4));

Revenue Scotland and Tax Powers Act 2014 (Commencement No. 3) Order 2015 (SSI 2015/18 (C.5)).

**Rural Affairs, Climate Change and Environment**

Plant Health (Scotland) Amendment Order 2015 (SSI 2015/10).
Firefighters' Pension Scheme (Consequential Provisions) (Scotland) Regulations 2015 [draft]

On 23 January 2015, the Scottish Government was asked:

1. The Regulations make consequential provision under section 3 of the Public Service Pensions Act 2013 in relation to a scheme established under section 1(1) of the 2013 Act, or any provision of the Act. Section 3(1) and (2) of the 2013 Act provide that “scheme regulations” (which are defined in sections 1(1) and (4) of the 2013 Act as regulations which establish schemes for the payment of pensions and other benefits) may include consequential, supplementary, incidental or transitional provisions in relation to the scheme or any provision of the 2013 Act. It appears that the new scheme regulations for Firefighters are yet to be made. Please explain why it is considered that these Regulations are properly made under sections 1 to 3 of the 2013 Act, given that they do not appear to establish a scheme for the payment of pensions and other benefits as section 3(1) and (2) requires, but rather make consequential provision separate to the “scheme regulations” to which they relate (which have not yet been laid); or whether any other enabling powers are relied on to make the provisions in a separate instrument.

2. The Regulations refer in many places to “the new scheme”, defined in regulation 2 as “the scheme established by regulations made under section 1(1) and (2)(f) of the Public Service Pensions Act 2013 […]”. While in general terms this instrument applies (or modifies the application of) provisions of the 1993 and 2013 Acts to the “new scheme”, by virtue of this instrument the Scottish Government is seeking the approval of the Parliament to the consequential provisions in these Regulations before the regulations containing “the new scheme” (referred to throughout) are laid. Accordingly, please confirm when it is anticipated that the new scheme regulations will be made and laid. Why has it been necessary to lay them later than these Regulations?

3. Regulations 13 and 14 refer to payments of upper or lower tier ill-health pensions under the new scheme. The terms “upper tier ill-health pension” and “lower tier ill-health pension” do not appear to be defined in the regulations or the 2013 Act. What is meant by these terms? Why is their meaning considered to be sufficiently clear in the context of the present regulations?

The Scottish Government responded as follows:

Question 1

In terms of section 37 of the 2013 Act, “scheme regulations” has the meaning given in section 1(4) of that Act. Section 1(4) states that “scheme regulations” are regulations under section 1. Regulations under section 1 may establish pension...
schemes (section 1(1)). But clearly not every set of regulations made under section 1 will be establishing a scheme. Once a scheme is established, it will require amended from time to time (also by way of section 1 regulations). There is no reason why the powers set out in section 3 of the 2013 Act can only be used in a set of regulations which itself establishes a scheme. The Scottish Government has no reason to believe that the powers quoted in the preamble of this draft instrument are not fully adequate to empower the making of regulations in terms of the draft.

Question 2

The regulations setting out the new scheme for fire and rescue workers in Scotland (the Firefighters' Pension Scheme (Scotland) Regulations 2015 (S.S.I. 2015/19) were laid before the Parliament on 26th January. These are part of a very large programme of instruments to deliver the new public service pension schemes in Scotland to the timescale set out in the Public Service Pensions Act 2013. The present draft instrument required to be laid in advance of laying S.S.I. 2015/19 because the former is subject to affirmative procedure. In addition, it was considered to be of advantage to lay all 4 draft instruments dealing with the Scottish schemes before the Parliament on the same date and this required to be on a date which would still allow time for Treasury signature of two of the instruments (those covering health service workers and teachers) prior to 1st April.

Question 3

Chapter 4 of Part 5 of S.S.I. 2015/19 deals with ill-health benefits and makes provision for the circumstances in which an ill-health pension is payable and the different tiers for such a pension.
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