



The Scottish Parliament
Pàrlamaid na h-Alba

JUSTICE COMMITTEE

AGENDA

14th Meeting, 2015 (Session 4)

Tuesday 5 May 2015

The Committee will meet at 10.00 am in the David Livingstone Room (CR6).

1. **Decision on taking business in private:** The Committee will decide whether to take item 5 in private.
2. **Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Bill:** The Committee will take evidence on the Bill at Stage 1 from—

Lord Cullen of Whitekirk;

and then from—

Julie Love, Chairperson, Death Abroad - You're Not Alone;

Louise Taggart, Founder Member, Families Against Corporate Killers;

Flt Lt James Jones RAF (Rtd), Campaigner.

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

Firemen's Pension Scheme (Amendment) (Scotland) Order 2015 (SSI 2015/140);

Firefighters' Pension Schemes (Amendment) (Scotland) Regulations 2015 (SSI 2015/141);

Police Pension Scheme (Scotland) Regulations 2015 (SSI 2015/142);

Firefighters' Compensation Scheme and Pension Scheme (Amendment) (Scotland) Order 2015 (SSI 2015/143);

Firemen's Pension Scheme (Amendment No. 2) (Scotland) Order 2015 (SSI 2015/173);

Police Pensions (Amendment) (Scotland) Regulations 2015
(SSI 2015/174).

4. **Subordinate legislation:** The Committee will consider the following instrument which is not subject to any parliamentary procedure—

Act of Adjournal (Criminal Procedure Rules Amendment No. 2) (European Protection Orders) 2015 (SSI 2015/121).

5. **Work programme:** The Committee will consider its work programme.

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The papers for this meeting are as follows—

Agenda item 2

Paper by the clerk

J/S4/15/14/1

Private paper

J/S4/15/14/2 (P)

[Inquiries into Fatal Accidents and Sudden Deaths etc. \(Scotland\) Bill, accompanying documents and SPICe briefing](#)

[Written submissions received on the Bill](#)

Agenda item 3

Paper by the clerk

J/S4/15/14/3

[Firemen's Pension Scheme \(Amendment\) \(Scotland\) Order 2015 \(SSI 2015/140\)](#)

[Firefighters' Pension Schemes \(Amendment\) \(Scotland\) Regulations 2015 \(SSI 2015/141\)](#)

[Police Pension Scheme \(Scotland\) Regulations 2015 \(SSI 2015/142\)](#)

[Firefighters' Compensation Scheme and Pension Scheme \(Amendment\) \(Scotland\) Order 2015 \(SSI 2015/143\)](#)

[Firemen's Pension Scheme \(Amendment No. 2\) \(Scotland\) Order 2015 \(SSI 2015/173\)](#)

[Police Pensions \(Amendment\) \(Scotland\) Regulations 2015 \(SSI 2015/174\)](#)

Agenda item 4

Paper by the clerk

J/S4/15/14/4

[Act of Adjournal \(Criminal Procedure Rules Amendment No. 2\) \(European Protection Orders\) 2015 \(SSI 2015/121\)](#)

Agenda item 5

Private paper

J/S4/15/14/5 (P)

Justice Committee

14th Meeting, 2015 (Session 4), Tuesday 5 May 2015

Inquiries into Fatal Accidents and Sudden Deaths etc (Scotland) Bill

Note by the clerk

Introduction

1. This cover note provides some background information in relation to the Committee's scrutiny of the Scottish Government's Inquiries into Fatal Accidents and Sudden Deaths etc (Scotland) Bill and outlines the next steps in the Committee's scrutiny.
2. This is the first evidence session on the Bill, further evidence sessions are scheduled for the 12 and 19 May with subsequent sessions dates still to be confirmed. It is expected that the Committee will encompass scrutiny of Patricia Ferguson MSP's forthcoming Members Bill on reforming FAI legislation as part of its scrutiny of this Bill.

Background

The Bill

3. The Scottish Government introduced the Inquiries into Fatal Accidents and Sudden Deaths etc (Scotland) Bill¹ on 19 March 2015 and the Parliamentary Bureau designated the Justice Committee as lead committee in consideration of the Bill at Stage 1 on 31 March 2015.
4. The Bill seeks to reform and modernise the law governing the holding of fatal accident inquiries (FAIs) in Scotland and largely implements the recommendations made in the 2009 Review of Fatal Accident Inquiry Legislation² led by Lord Cullen of Whitekirk KT, former Lord President of the Court of Session.
5. From the Policy Memorandum, the objectives of the Bill are to—
 - build on the recommendations implemented by the Crown Office and Procurator Fiscal Service (COPFS) to make the system more efficient;
 - extend the categories of death in which it is mandatory to hold a fatal accident inquiry;
 - place a requirement on those to whom sheriffs direct recommendations at the conclusion of the inquiry to respond;
 - permit discretionary FAIs into deaths of Scots abroad where the body is repatriated to Scotland;

¹ The Bill and accompanying documents can be viewed on the Parliament's website <http://www.scottish.parliament.uk/parliamentarybusiness/Bills/87332.aspx> [accessed April 2015]

² The Review report can be viewed on the Scottish Government's website <http://www.gov.scot/Publications/2009/11/02113726/0> [accessed April 2015]

- permit FAls to be re-opened if new evidence arises or, if the evidence is so substantial, to permit a completely new inquiry to be held; and
- provide flexibility for the locations and accommodation for FAls.

Briefing on the Bill

6. On 29 April, the Scottish Parliament Information Centre (SPICe) produced a briefing paper on the Bill which can be found at the following link—

- <http://www.scottish.parliament.uk/parliamentarybusiness/88981.aspx> [accessed April 2015]

7. The briefing paper also covers Patricia Ferguson MSP's proposals for a Member's Bill on this area.

Evidence to the Committee

Written evidence

8. On 24 March, the Committee issued a call for views on the provisions contained in the Bill and invited comments on whether—

- the circumstances for mandatory FAls provided for in the Bill are sufficient;
- the circumstances provided for in the Bill in respect of discretionary inquiries are appropriate;
- there are alternative approaches that should be considered;
- the provisions in relation to FAls into deaths abroad are appropriate;
- the provisions in relation to the pre-inquiry procedure are appropriate; and
- what are the practical implications of the provisions of the Bill.

9. The call for views closed on 28 April and the Committee received 34 responses. Written submissions³ received from the witnesses attending on 5 May meeting, and others, can be found at the following link—

- <http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/88530.aspx> [accessed April 2015]

Informal briefing

10. The Committee received an informal briefing on the Bill from Scottish Government officials on 24 March 2015. Following this, the Scottish Government provided further clarification on issues raised during discussion, namely: repatriation of bodies; information for families; and civil litigation. This has been reproduced at **Annexe A** to this note.

³ A pack of written submissions has been circulated to each member with their meeting papers.

Oral evidence

11. At its meeting on 31 March, the Committee agreed its scrutiny approach to the Bill which included a series of evidence sessions throughout May and June from witnesses with a specific interest in some, or all, aspects of the Bill, culminating in a final evidence session with the Minister for Community Safety and Legal Affairs. The evidence sessions will also include hearing from Patricia Ferguson MSP on her proposals

12. It was agreed that, in order to set the scene and to understand more fully the impact of this legislation on how FAIs would work in practice under these proposals, that the Committee would begin by take evidence from Lord Cullen and then from FAI campaigners at its first session on 5 May, followed by a series of panels at subsequent meetings including trade unions, public bodies including the Crown Office and Procurator Fiscal Service, practitioners, the Sheriff's Association, the Lord President and the Scottish Courts and Tribunals Service.

Next steps

13. At its meeting on 5 May, the Committee will hear from Lord Cullen then from the following campaigners: Julie Love [Deaths Abroad – You Are Not Alone \(DAYNA\)](#), Louise Taggart, [Families Against Corporate Killers \(FACK\)](#) and Ft Lft James Jones.

Correspondence from the Scottish Government Bill Team - 30 March 2015

Following our informal evidence about the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Bill, I am writing to provide further information which the Committee may find helpful in the light of the questions asked at the session on 24 March.

Repatriation of bodies

The Committee were interested in the proposed requirement in section 6(1)(c) of the Bill which permits a fatal accident inquiry (FAI) to be held on a discretionary basis where a body is repatriated to Scotland. The requirement for the repatriation of the body echoes the death of service personnel abroad provisions introduced in section 12 of the Coroners and Justice Act 2009 (see in particular subsections (4)(a) and (5)(a), both of which require the return of a body to the UK). The 2009 Act provisions link to the Scottish legislation via section 1A of the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976, which is restated in section 7 of the Bill.

The requirement for the body to be repatriated to Scotland in overseas cases seems, however, be a reasonable criterion for the holding of an FAI into a death abroad. Paragraph 141 of the Policy Memorandum for the Bill sets out the difficulties which are anticipated in relation to holding FAIs into deaths abroad. To carry out a death investigation into a death abroad where the body has not even been repatriated to Scotland would seem to raise yet another obstacle and reduce any realistic prospect that a death investigation in Scotland (and possible FAI) would sufficiently establish the circumstances of death. This is particularly the case because a repatriated body is usually accompanied by a certificate of death from the country in which the death occurred.

If we were to dispense with the requirement for the repatriation of the body, what criteria would be used? If a person normally resident in Scotland simply disappears in a foreign country, should that merit a death investigation in Scotland?

Furthermore, if we were to include cases where the body was not repatriated to Scotland the numbers of death investigations into deaths overseas may rise significantly and this may cast into doubt the ability of the Crown Office and Procurator Fiscal Service (COPFS) to properly investigate any sudden, suspicious or unexplained deaths abroad which give rise to serious public concern.

The repatriation of the body does open up the possibility of a post mortem being carried out in Scotland, which may go a long way to establishing the cause of death if there is any doubt, though, as I indicated during the session, bodies are often embalmed for transportation which prevents a post mortem being carried out

Information for families

Paragraphs 44 to 47 of the Policy Memorandum set out the procedures followed by COPFS to keep bereaved families informed about the progress of death investigations and the likelihood of an FAI being held.

Section 8 of the Bill is a new provision which would provide in statute for the current practice where the Lord Advocate gives reasons in writing for if requested to do so by the bereaved family where it is decided not to hold an FAI.

Civil litigation

The Convenor asked whether a sheriff's determination was admissible in criminal or civil proceedings and I confirmed that we were maintaining the existing law in section 6(3) of the 1976 Act (restated in section 25(6) of the Bill) whereby the sheriff's determination is not admissible in subsequent civil or criminal proceedings, but otherwise evidence heard at a FAI is a matter of public record and is admissible. Section 26(3) of the Bill, for example, restates section 6(5) of the 1976 Act and allows for the obtaining of transcripts in certain circumstances (in cases where there are transcripts).

I noted that some firms of solicitors try to use FAIs as a method of trying to establish grounds for subsequent civil action. The Committee may, for example, find the explanation in the website below interesting. This clearly sets out how some firms of solicitors view FAIs as an opportunity to glean information which may support a civil claim.

[http://www.lemac.co.uk/resources/guides/The Fatal Accidents and Sudden Deaths Inquiry.htm](http://www.lemac.co.uk/resources/guides/The_Fatal_Accidents_and_Sudden_Deaths_Inquiry.htm)

In particular this site suggests that "any gaps or inadequacy in your civil claim should become clear or be capable of being dealt with".

This is not the purpose of fatal accident inquiries, which are inquisitorial judicial inquiries held in the public interest and not preliminary hearings for adversarial actions for civil reparation. Section 1(4) of the Bill makes it clear that the purpose of an inquiry is not to establish civil or criminal liability.

I hope this is helpful.

Hamish Goodall

Justice Committee

14th Meeting, 2013 (Session 4), Tuesday 5 May 2015

Subordinate legislation

Note by the clerk

Purpose

1. This paper invites the Committee to consider the following negative instruments:
 - Firemen's Pension Scheme (Amendment) (Scotland) Order 2015 (SSI 2015/140) *[see page 1]*;
 - Firefighters' Pension Schemes (Amendment) (Scotland) Regulations 2015 (SSI 2015/141) *[see page 6]*;
 - Police Pension Scheme (Scotland) Regulations 2015 (SSI 2015/142) *[see page 20]*;
 - Firefighters' Compensation Scheme and Pension Scheme (Amendment) (Scotland) Order 2015 (SSI 2015/143) *[see page 28]*;
 - Firemen's Pension Scheme (Amendment No. 2) (Scotland) Order 2015 (SSI 2015/173) *[see page 37]*;
 - Police Pensions (Amendment) (Scotland) Regulations 2015 (SSI 2015/174) *[see page 39]*.
2. Further details on the procedure for negative instruments are set out in Annexe A attached to this paper.

**FIREMEN'S PENSION SCHEME (AMENDMENT) (SCOTLAND) ORDER 2015
(SSI 2015/140)**

Introduction

3. The purpose of this instrument is to make amendments to the Firemen's Pension Scheme Order 1992 consequential to the introduction of same sex marriage in Scotland. It also sets out the revised 1992 Scheme pensionable pay bands (for pension contribution purposes) to include the 1% annual uprating for the next four years from 1 April 2015.

4. The instrument came into force on 1 April 2015.

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/2015/140/contents/made>

Consultation

6. The policy note on the instrument states that a consultation was undertaken from 28 January to 19 February 2015. All stakeholders were consulted, including the Fire Brigades Union, Fire Officers Association and relevant Scottish and UK Government Departments. Three responses were received in total, one from an individual and two from firefighters' unions.

Delegated Powers and Law Reform Committee consideration

7. The Delegated Powers and Law Reform (DPLR) Committee considered this instrument at its meeting on 21 April 2015 and agreed to draw it to the attention of the Parliament as it fails to comply with the requirements of section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 (breach of the 28 day rule). The instrument was laid on 26 March 2015 and came into force on 1 April 2015.

8. The relevant extract from the DPLR Committee's report on the instrument is reproduced on page 3 of this paper.

Justice Committee consideration

9. If the Committee agrees to report to the Parliament on this instrument, it is required to do so by 18 May 2015.

**Policy Note: Firemen's Pension Scheme (Amendment) (Scotland) Order 2015
(SSI 2015/140)**

The above instrument was made in exercise of the powers conferred by section 26(1) to (5) of the Fire Services Act 1947 and sections 12 and 16 of the Superannuation Act 1972. This instrument is subject to negative procedure.

Policy Objectives

This Order amends the Firemen's Pension Scheme Order 1992. It makes amendments consequential on the introduction of same sex marriage in Scotland. It also sets out the revised 1992 Scheme pensionable pay bands (for pension

contribution purposes) to include the 1% annual uprating for the next four years from 1 April 2015.

Consultation

A consultation was undertaken from 28 January to 19 February 2015. All stakeholders were consulted, including the Fire Brigades Union, Fire Officers Association and relevant Scottish and UK Government Departments. Three responses were received in total, one from an individual and two from firefighters' unions. A copy of the consultation document and a summary of responses will be made available on the Scottish Public Pension Agency's website www.sppa.gov.uk.

Impact Assessments

The equality impact assessment has been completed and will be made available in due course. No impact is expected.

Financial Effects

The changes extend survivor benefits to survivors of same sex marriage and will be reflected in the overall costs of the scheme at each future valuation. It is not anticipated that this will have a material impact on the future contribution rates set by scheme valuations. The estimated required contribution yield from members for the period April 2015 to March 2019 takes into account the indexation of contribution bands.

Business and Regulatory Impact Assessment

This instrument does not impose any additional costs or reduce existing costs for business, third or public sector organisations and on that basis no Business and Regulatory Impact Assessment is required for these regulations.

Scottish Public Pensions Agency
An Agency of the Scottish Government
25 March 2015

Extract from the Delegated Powers and Law Reform Committee 22nd Report 2015

Firemen's Pension Scheme (Amendment) (Scotland) Order 2015 (SSI 2015/140) (Justice Committee)

1. This instrument amends the Firemen's Pension Scheme ("the 1992 Scheme") as contained in the Firemen's Pension Scheme Order 1992 ("the 1992 Order").
2. The Order was laid before Parliament on 26 March 2015 and came into force on 1 April 2015. The Scottish Government has provided a letter to the Presiding Officer, to explain the failure to comply with the "28 day rule", as set out in section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 ("ILRA"). The correspondence (which also relates to SSI 2015/143) is reproduced at Appendix A.
3. **The Committee draws the instrument to the attention of the Parliament under reporting ground (j) as it fails to comply with the requirements of section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010. The**

instrument was laid on 26 March 2015 and came into force on 1 April 2015. The very short period of time between laying the instrument and it coming into force has meant that there was no opportunity for scrutiny of the instrument to take place prior to it coming into force.

4. The Committee considers that the breach of the 28-day rule in this case raises a broader issue about the timetabling of instruments which are prepared and laid in parallel with UK instruments which make similar provision. The Committee considers that there is a clear need for projects of this nature to be planned in a way which allows for the procedural requirements of both Parliaments to be met. The Committee considers it to be unsatisfactory that this has not been achieved in the present case.

5. The Committee welcomes, however, the fact that the Minister for Parliamentary Business has undertaken in recent correspondence with the Committee to review the processes for laying instruments in these circumstances and to take steps to improve awareness within the UK Government of the challenges involved. The Committee considers that this work should be progressed in early course, in order to avoid similar issues arising in the future.

Appendix A

Firemen's Pension Scheme (Amendment) (Scotland) Order 2015 (SSI 2015/140)

Letter to Presiding Officer: breach of laying requirements

The above instruments were made on 24 March 2015 under the powers cited in the preamble in each case. They are being laid before the Scottish Parliament on 26 March 2015 and will come into force on 1 April 2015 as part of the public service pension reforms applicable from that date.

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 provide for the reform of Scotland's police pension scheme and complete reform of Scotland's firefighter pension scheme (all as required by the Public Service Pensions Act 2013). Occupational pensions policy is reserved and the requirements of the 2013 Act were set out and determined by the UK Government which took no account of Scotland's circumstances in meeting that imposed timetable. The terms of the devolved public service pension schemes in Scotland broadly mirror those being introduced for the counterpart schemes in England and Wales. This has meant that Scottish Government officials could not complete the above instruments until final copies of the counterpart instruments were received. The counterpart regulations for the police scheme were laid at Westminster on 5 March and the firefighters set on 10 March. As a consequence, the above instruments could not be finalised and laid by 3 March – the date required to avoid breaching the 28-day rule.

On 9 March Mr Swinney, Deputy First Minister and Cabinet Secretary for Finance, Constitution and Economy, wrote to the Convener of the Delegated Powers and Law Reform Committee setting out that it would not be possible to meet the 28 day rule for certain instruments. I attach a copy of that letter for information. It has been necessary

to seek further confirmation on a number of queries regarding the police scheme regulations, which unfortunately meant that those regulations could not be finalised for 19 March as originally estimated. In addition subsequent to Mr Swinney's letter, the Department of Communities and Local Government, who have responsibility for the firefighters scheme in England, identified that a further short instrument was needed. That additional instrument is amongst those listed in the heading of this letter.

Reforming the five devolved public service pension schemes to a programme and timetable set by the UK Government has required 19 separate instruments and I can confirm that despite those constraints fifteen of those instruments complied with the 28-day rule.

FIREFIGHTERS' PENSION SCHEMES (AMENDMENT) (SCOTLAND) REGULATIONS 2015 (SSI 2015/141)

Introduction

10. The purpose of this instrument is to provide transitional arrangements for members who transfer to the Firefighters' Pension Scheme (Scotland) 2015. It also sets out more detail on scheme governance and member contributions from 1 April 2015.

11. The instrument came into force on 1 April 2015.

12. 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/2015/141/contents/made>

Consultation

13. The policy note on the instrument states that a consultation was undertaken from 28 January to 19 February 2015. All stakeholders were consulted, including the Fire Brigades Union, Fire Officers Association and relevant Scottish and UK Government Departments. Three responses were received in total, one from an individual and two from firefighters' unions.

Delegated Powers and Law Reform Committee consideration

14. The Delegated Powers and Law Reform (DPLR) Committee considered this instrument at its meeting on 28 April 2015 and agreed to draw it to the attention of the Parliament as several of the regulations are defectively drafted and lack clarity and there are also a number of minor drafting errors.

15. The relevant extract from the DPLR Committee's report on the instrument is reproduced on page 10 of this paper.

Justice Committee consideration

16. If the Committee agrees to report to the Parliament on this instrument, it is required to do so by 18 May 2015.

Policy Note: Firefighters' Pension Schemes (Amendment) (Scotland) Regulations 2015 (SSI 2015/141)

The above instrument was made in exercise of the powers conferred by section 1(1) and (2)(f) of, and paragraph 6(c) of Schedule 2 to, the Public Service Pensions Act 2013. The instrument is subject to negative procedure.

Policy Objectives

The purpose of this instrument is to provide transitional arrangements for members who transfer to the Firefighters' Pension Scheme (Scotland) 2015. In June 2014, SPPA consulted on the first tranche of the Regulations required to introduce the reform scheme from 1 April 2015. This instrument also sets out more detail on scheme governance and member contributions from 1 April 2015.

Governance – New regulations 5A to E of the Firefighters’ Pension Scheme (Scotland) Regulations 2015 (“the 2015 Regulations”) provide more detail regarding the requirement for the scheme manager to set up Scheme Pension and Pension Advisory Boards. The provisions reflect the arrangements established for the other public service pension schemes in Scotland.

III Health - Regulations 51,59, 65, 66, and 69 of the 2015 Regulations, new paragraphs 22,23,24,25,37 and 38 of Schedule 2 of the 2015 Regulations and amended rule 2 of Part 3 and Annex 1 of the Firefighters’ Pension Scheme (Scotland) Order 2007 (“the 2007 Order”); and rules B3, B7 and F9 of the Firemen’s Pension Scheme Order 1992 (“the 1992 Order”).

These provisions set down how the ill-health benefits of individuals who have participated in the 2015 Scheme and in one of the final-salary schemes should be determined.

The Regulations provide that where a 2015 Scheme member who was previously in the 1992 or 2006 scheme (the scheme established by the 2007 Regulations is referred to as “the 2006 scheme”, since those Regulations had effect from April 2006) becomes entitled to a lower-tier ill-health pension, their entitlement is paid from the 2015 Scheme. However, to ensure that connected service in the 1992 or 2006 Scheme is also recognised, an equivalent amount of benefit is calculated in accordance with the rules of their earlier scheme, and this ‘equivalent amount’ is paid from the 2015 Scheme. Commuted lump sums are paid and determined on the same basis.

Any entitlement to a higher tier pension is calculated in accordance with the 2015 Scheme. However, the higher tier enhancement is applied to the lower tier pension, including the ‘equivalent amount’ calculated in accordance with the member’s earlier scheme rules, but ‘adjusted’ so that added pension is not taken into account.

As the member’s 1992 or 2006 scheme pension is left in their previous scheme, it is possible for that pension to be transferred to another pension scheme, even if they are already receiving ill-health benefits from the 2015 Scheme in respect of their prior scheme service. Consequently, if that pension is transferred out to another pension scheme, the corresponding ‘equivalent portion’ of ill-health pension is deducted from the ill-health pension being paid out of the 2015 Scheme.

When a member who has moved into the 2015 scheme from either the 1992 or 2006 scheme reaches the Normal Pension Age in their previous scheme, the ‘equivalent amount’ ceases to be payable from the 2015 Scheme and is replaced by a continued pension from the member’s previous scheme payable from normal pension age.

There are special provisions to deal with the cases where any member is being considered for an ill-health award at the time of their transition.

Members with 1992 Scheme service who are awarded a lower-tier ill-health pension which is payable under the 2015 Scheme as an ‘equivalent amount’ will continue to be able to commute a proportion of these benefits to a lump sum under the 1992 Scheme terms, using actuarially neutral factors. Any connected 2015 Scheme service will count towards determining whether the member can commute the maximum 25% of their 1992 Scheme pension if they retire before age 55.

Employer initiated retirement – Amended regulation 62 of the 2015 Regulations and rule 6 of Part 3 of the 2007 Order.

Where a firefighter with 2006 Scheme membership is subject to employer initiated retirement in the 2015 Scheme, the employing authority must at the same time consider using the equivalent provisions in the 2006 Scheme.

Death Benefits - Amended regulations 78,86,93 and 96 and new paragraphs 26,27,28,29 and 30 of Schedule 2 of the 2015 Regulations and rules C1, D1, E1, E3 and E4 of the 1992 Order.

Under the 2015 Scheme, survivor benefits are provided in the form of surviving partner's pension, bereavement pension, children's pension and lump sum death benefits, which reflects similar provision in the 2006 Scheme. Surviving partners of all 2015 Scheme members who are not deferred members of the 1992 or 2006 scheme, who die in pensionable service in the 2015 Scheme, will have their benefits determined under the 2015 Scheme. Similarly, where these members die in service and have eligible children, they will also receive benefits under the 2015 Scheme, rather than under the member's previous scheme. However, if the individual was a deferred member of the 1992 or 2006 scheme, the survivor will receive deferred survivor benefits in accordance with those scheme rules. The provisions for lump sum death payments are no less than they would have been under the 1992 or 2006 scheme.

Member Contributions - Amended regulation 110 of the 2015 Regulations sets out the member contribution rates for the 2015 scheme for each of the four years from 1 April 2015 and mirror the rates being introduced to the Firefighters' scheme in England.

Employer Cost Cap - New regulation 140A in the 2015 Regulations sets out the employer cost cap for the 2015 Scheme.

Accrual Rate – New paragraphs 31 and 34 of Schedule 2 of the 2015 Regulations and new Part 2A of Schedule 2 of the 1992 Order.

At present 1992 Scheme members can benefit from "double accrual", which takes effect after 20 years' service. 2015 Scheme members with 1992 Scheme benefits who remain in continuous pensionable service in the 2015 Scheme, will have those benefits calculated on the basis of the accrual rate that they would have received had they remained in the 1992 Scheme until retirement. This is achieved by taking into account the pensionable service accrued in the 2015 Scheme. For example, if a member accrued 30 years' continuous service between the 1992 and 2015 Scheme, their accrual rate for any service accrued under the 1992 Scheme will be calculated on the basis of 45ths. A formula that provides for this effect is set out in new Part 2A of Schedule 2.

Additional pension - New paragraphs 31 and 34 of Schedule 2 of the 2015 Regulations and rule 7 of Part 11 of the 2007 Order and rules B5D, G2A, G7 and G8 of the 1992 Order.

If a member has already arranged to purchase additional service or increased benefits in the 1992 scheme, the arrangement will remain valid even after the member transfers to the 2015 Scheme provided that they had remained in continuous

pensionable service in the 2015 Scheme if they were members of the 1992 Scheme, or if they were members of the 2006 Scheme and had continuous service. These members will continue to pay additional contributions on the same basis as they did before transferring from their final-salary scheme.

Final pensionable pay – New paragraphs 32, 33, 34, 42 and 43 of Schedule 2 of the 2015 Regulations; and rule 2 of Part 11 and rule 8 of Part 12 of the 2007 Order and rules B1A, B5A, G1 of the 1992 Order.

Schedule 7 to the 2013 Act requires that the old scheme retirement pension is calculated using earnings at retirement or upon leaving the new scheme so enabling the old scheme pension rights to be honoured in full (“the final salary link”) Paragraphs 42 and 43 of Schedule 2 provide that this right may only be exercised once and that any subsequent period of employment and scheme membership will not lead to a recalculation of any old scheme pension that is in payment.

Where a member of the 2015 Scheme has service that is continuous from the 1992 or 2006 Scheme, the member’s final pensionable pay is used. Service is still regarded as “continuous” so long as any break in service is no more than five years, or if any longer, spent in pensionable public service. Provided that continuity of service is maintained in this way, benefits relating to the member’s earlier scheme will be linked to their final salary when the member ceases active membership of the 2015 Scheme.

Where the ‘final salary link’ applies, there is a requirement in the 2013 Act that the member’s ‘pensionable pay’ in the 2015 Scheme is not less generous than it would have been in their previous scheme. This includes certain allowances and supplements that would previously have been deemed to be pensionable and could also apply if the member has seen a reduction in salary. The regulations therefore ensure that a member is not disadvantaged if the definition of final salary used to determine their benefits would have been higher in their original scheme than under the 2015 Scheme.

When a decrease in pay occurs before the member becomes a member of the 2015 Scheme and pay does not again rise above that high point, final pensionable pay is determined using the member’s 1992 or 2006 scheme pensionable pay and rules. When the decrease occurs after transition, the member’s pensionable pay in the last year of service before the decrease occurred is used. When a member joins the 2015 Scheme, but does not re-join the scheme in time to retain continuity of service, final pensionable pay would be that at the point of deferment from the member’s original membership.

Deferred membership – New paragraphs 35 and 36 of Schedule 2 of the 2015 Regulations, rule 1C of Part 2 of the 2007 Order and rules 3 and 4 of Part 3 of the 2007 Order and rules A3, A13A, B1A, B1B, B5 and F2 of the 1992 Order.

For members of the 2006 Scheme other than special members, the regulations ensure that if a member ceases to have active membership in the 2015 Scheme but returns after a gap of not more than five years, their previous 2015 Scheme service and any connected 2006 Scheme service will no longer be deferred. Instead, it will be treated as active for certain purposes and as continuous with any new 2015 service. If a member re-joins and the gap in membership exceeds five years, the earlier membership in both the 2015 Scheme and the 2006 Scheme will remain deferred and the new membership in the 2015 Scheme is treated as separate pension entitlement.

A different approach applies in respect of 1992 Scheme members and special members of the 2006 Scheme, as the 1992 Scheme is closed to re-joiners. As a consequence, the member is not treated as active for certain purposes in the 1992 Scheme once they leave pensionable service in the 2015 Scheme. In such instances they would become a deferred member of the 1992 Scheme. If the member elects to re-join a firefighters' pension scheme while still transitionally or fully protected, they would join the 2006 Scheme, rather than the 2015 Scheme. However, a member of the 1992 Scheme who is in continuous pensionable service in that Scheme before the transition date and remains in continuous pensionable service in the 2015 Scheme until they leave pensionable service or retire, is treated as an active member of the 1992 Scheme for certain purposes.

Refunds of Contributions – New paragraph 39 of Schedule 2 of the 2015 Regulations.

If a member with existing 2006 Scheme service ceases active membership after transferring to the 2015 Scheme, contributions are refunded if the member has in total less than three months qualifying service across both schemes and any further contributions for additional service cease to be payable.

Qualifying benefits – New paragraphs 40 and 41 of Schedule 2 of the 2015 Regulations; amended rule 1 of Part 10 of the 2007 Order and amended rule F2 of the 1992 Order.

Two years' membership of the 1992 Scheme is the minimum amount required in order to qualify for benefits in that scheme. The equivalent provision in the 2006 and 2015 schemes is three months. In considering whether a 2015 scheme member with service in either the 2006 or 1992 scheme qualifies for benefits in either the member's previous scheme or in the 2015 Scheme, any linked 1992, 2006 and 2015 Scheme service is to be taken into account. For qualifying purposes, transferred-in service in the 1992 or 2006 Scheme is counted on the same basis as before 1 April 2015.

Transfer of final-salary benefits – New paragraphs 44,45 and 46 of Schedule 2 of the 2015 Regulations and amended rules 1, 8, 9 and 10 of Part 12 of the 2007 Order. These provisions are necessary to cater for individuals wishing to transfer-in membership of another public service pension scheme, which has accrued on a final salary basis. Upon joining, although their active membership may be in the 2015 Scheme, the transferred-in amount should be transferred into the 2006 Scheme. This is because the 2015 Scheme is operated wholly on a career-average basis and does not provide for final salary pensions.

End of active membership in one of the final-salary schemes – Amended Parts 2 and 3 of the 2007 Order and amended Parts A and B of the 1992 Order.

These provisions ensure that the transitional protections set out in the 2014 Regulations are reflected in the 1992 and 2006 Scheme Orders. The transitional protections are set out when a member of the 1992 and 2006 schemes must move into the 2015 Scheme, or else become a deferred member of their scheme.

Consultation

To comply with the requirements of section 21 of the 2013 Act, a consultation was undertaken from 28 January to 19 February 2015. All stakeholders were consulted, including the Fire Brigades Union, Fire Officers Association and relevant Scottish and UK Government Departments. Three responses were received in total, one from an individual and two from firefighters' unions. A copy of the consultation document and a summary of responses will be made available on the Scottish Public Pension Agency's website www.sppa.gov.uk.

Impact Assessments

The equality impact assessment has been completed and will be made available in due course. No impact is expected.

Financial Effects

In line with the reform of public service pensions, these changes will support the introduction of a reformed scheme from 2015 that is designed to ensure long-term sustainability and affordability. The estimated required contribution yield from members for the period April 2015 to March 2019 takes into account the indexation of contribution bands.

Business and Regulatory Impact Assessment

This policy introduces reform to the pension scheme for firefighters in Scotland, following recommendations by the Independent Public Service Pensions Commission. This policy does not impose any additional costs or reduce existing costs for business, third or public sector organisations and on that basis no Business and Regulatory Impact Assessment is required for these regulations.

Scottish Public Pensions Agency
An Agency of the Scottish Government
25 March 2015

Extract from the Delegated Powers and Law Reform Committee 24th Report 2015

Firefighters' Pension Schemes (Amendment) (Scotland) Regulations 2015 (SSI 2015/141) (Justice Committee)

1. This instrument provides additional transitional arrangements for members of the Firefighters' Pension Scheme 1992 (as set out in Schedule 2 to the Firemen's Pension Scheme Order 1992) ("the 1992 Scheme") and the New Firefighters' Pension Scheme (Scotland) 2006 (as set out in Schedule 1 to the Firefighters' Pension Scheme (Scotland) Order 2007) ("the NFPS") who transfer to the Firefighters' Pension Scheme (Scotland) 2015 on 1 April 2015.

2. The instrument also makes other miscellaneous amendments to the Firefighters' Pension Scheme (Scotland) Regulations 2015 ("the principal Regulations"), including further provision as to governance arrangements for the Scheme and provision setting contribution rates for members.

3. The Regulations are subject to the negative procedure and were laid before Parliament on 26 March 2015 before coming into force on 1 April 2015. The Scottish Government has provided a letter to the Presiding Officer, to explain the failure to comply with the “28 day rule”, as set out in section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010. The correspondence (which also relates to SSI 2015/142) is reproduced at Appendix B.

4. In considering the instrument, the Committee asked the Scottish Government for an explanation of certain matters. The Scottish Government responded with the relevant explanation and indicated that it would deal with identified errors by way of an amending instrument. The correspondence is reproduced at Appendix C.

5. The Committee draws the instrument to the Parliament’s attention on the following reporting grounds:

Ground (i)

6. **Regulation 22(d), in inserting new paragraph 38 in Part 3C of Schedule 2 to the principal Regulations, appears to be defectively drafted. Paragraph 38(2)(b) determines the date on which a member is taken to join the new pension scheme where they decide not to appeal against refusal of an ill-health award under the 1992 Scheme. It does so with reference to “the expiry of 28 days from the date on which the member received the last of the documents which the authority is required to supply under rule H2(4) of the 1992 Scheme”.**

7. **Rule H2(4) of the 1992 Scheme as it applies in Scotland does not require the fire authority to provide any documents, although the equivalent rule in England and Wales does require the relevant fire authority to do so. In the absence of a requirement under the Scottish rules to supply documents, the provision does not give effect to the apparent policy objective of establishing the alternative of two dates on which a member is taken to join the new scheme, in circumstances where the member decides not to appeal against refusal of an ill-health award under the 1992 Scheme.**

8. **Regulation 26(i)(ii), which amends rule 9 of the NFPS regarding commutation of pensions, appears to be defectively drafted. The provision inserts new paragraph (1A) in rule 9. As acknowledged by the Scottish Government, the wording of the text to be inserted as new paragraph (1A) does not make sense. The meaning of the provision is accordingly unclear and it does not deliver the intended policy objective.**

9. **Regulation 34(b), insofar as it inserts new rule B1A(3)(b) in the 1992 Scheme, appears to be defectively drafted. As acknowledged by the Scottish Government, the wording of the text to be inserted as new rule B1A(3)(b) does not make sense. The meaning of the provision is accordingly unclear and it does not deliver the intended policy objective.**

Ground (h)

10. **The meaning of regulation 7, which amends regulation 59(2) of the principal Regulations, is lacking in clarity. The amendment does not indicate whether or not the sum referred to in new regulation 59(2)(ba) is to be included in the calculation referred to in regulation 59(2). The intended effect of new subparagraph (ba) is accordingly unclear.**

11. The meaning of regulation 38(a)(i), which inserts new sub-paragraph (ab) in rule F2(1) of the 1992 Scheme, is lacking in clarity. The word “or” is included at the end of new sub-paragraph (ab), instead of the intended word “and”. The use of the word “or” rather than “and” indicates that the period of service mentioned in new sub-paragraph (ab) is to be regarded as an alternative to one or more of the other periods of service mentioned in sub-paragraphs (a), (b) and (c) of paragraph (1). However, the apparent policy intention is that each period of service mentioned in existing paragraph (1), including the period in new sub-paragraph (ab), is to be calculated cumulatively.

General ground

12. Regulation 9 amends regulation 65 of the principal Regulations by substituting paragraph (3). Substituted sub-paragraph (3)(a) refers to entitlement to payment of a lower tier ill-health pension under “rule 2(2) of the NFPS”. There are several rules numbered “2(2)” in various Parts of the NFPS, at least two of which refer to entitlement to lower tier ill-health pension. The omission of the words “of Part 3” after “rule 2(2)” is a drafting error which falls to be reported under the general ground.

13. Regulation 22(d) inserts paragraphs 26 and 28 in new Part 3B of Schedule 2 to the principal Regulations. Paragraph 26(3) refers to a bereavement pension payable to a spouse or civil partner under rule E8 of the 1992 Scheme, while paragraph 28(2) refers to a bereavement pension payable to an eligible child under rule E8A of the 1992 Scheme. These references have been included in error. Rule E8 of the 1992 Scheme as it has effect in Scotland does not make provision for bereavement pensions, while rule E8A has no effect in Scotland at all. The provisions have effect in England and Wales only. The references to bereavement pension in paragraphs 26(3) and 28(2) of the principal Regulations are accordingly unnecessary.

14. The instrument also includes the following minor drafting errors:
- (a) In new paragraphs (6) to (8) of rule 1 of Part 11 of the NFPS, as inserted by regulation 28(a)(ii) of the instrument, the references to “paragraph 33” of Schedule 2 to the 2015 Regulations should be references to “paragraph 32” of that Schedule;
 - (b) In new paragraph (2A)(b) of rule 2 of Part 11 of the NFPS, as inserted by regulation 28(b)(ii) of the instrument, the reference to “paragraph 33(4)” of Schedule 2 to the 2015 Regulations should be a reference to “paragraph 32(4)” of that Schedule.
 - (c) In new rule B1A(3)(a) of the 1992 Scheme, as inserted by regulation 34(b) of the instrument, the reference to “paragraph (1)(a)” of rule B1 should be to “paragraph (1)(b)” of rule B1.
 - (d) In new rule B2A of the 1992 Scheme, as inserted by regulation 34(d) of the instrument:
 - (i) the reference to “regulation 65(4)(a)” of the 2015 Regulations should be to “regulation 65(3)(b)” of those Regulations; and
 - (ii) the reference to “rule B1A(3)(i)” of the 1992 Scheme should be to “rule B1A(3)(a)” of that Scheme.

- (e) In new paragraph (1A) of rule B5D of the 1992 Scheme, as inserted by regulation 34(h)(ii) of the instrument, the reference to “paragraph (3)(i)” of rule B1A should be to “paragraph (3)(a)” of rule B1A.
- (f) In new paragraphs (9), (10) and (12) of rule G1 of the 1992 Scheme, as inserted by regulation 39(a)(ii) of the instrument, the references to “paragraph 34” of Schedule 2 to the 2015 Regulations should be references to “paragraph 33” of that Schedule.

Correction of errors

15. The Scottish Government’s response to questions on the instrument from our legal advisers states that the Scottish Government “will deal with identified errors by way of an amending instrument (with retrospective effect as from 1st April 2015)”. The Committee however considers it unclear from the response which of the points raised by the legal advisers are accepted by the Scottish Government as identified errors.

16. The Committee accordingly urges the Government to amend all of the errors reported by the Committee under reporting grounds (i), (h) and the general reporting ground, with retrospective effect as from 1st April 2015.

Ground (j)

17. The instrument fails to comply with the requirements of section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010. The instrument was laid on 26 March 2015 and came into force on 1 April 2015. The very short period of time between laying the instrument and it coming into force has meant that there was no opportunity for scrutiny of the instrument to take place prior to it coming into force.

18. The Committee considers that the breach of the 28-day rule in this case raises a broader issue about the timetabling of instruments which are prepared and laid in parallel with UK instruments which make similar provision. The Committee considers that there is a clear need for projects of this nature to be planned in a way which allows for the procedural requirements of both Parliaments to be met. The Committee considers it to be unsatisfactory that this has not been achieved in the present case. The Committee welcomes, however, the fact that the Minister for Parliamentary Business has undertaken in recent correspondence with the Committee to review the processes for laying instruments in these circumstances and to take steps to improve awareness within the UK Government of the challenges involved. The Committee considers that this work should be undertaken in early course, in order to avoid similar issues arising in the future.

Appendix B

**Firefighters’ Pension Schemes (Amendment) (Scotland) Regulations 2015 (SSI 2015/141); and
Police Pension Scheme (Scotland) Regulations 2015 (SSI 2015/142);**

Breach of laying requirements: Letter to the Presiding Officer

The above instruments were made on 24 March 2015 under the powers cited in the preamble in each case. They are being laid before the Scottish Parliament on 26

March 2015 and will come into force on 1 April 2015 as part of the public service pension reforms applicable from that date.

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 provide for the reform of Scotland's police pension scheme and complete reform of Scotland's firefighter pension scheme (all as required by the Public Service Pensions Act 2013). Occupational pensions policy is reserved and the requirements of the 2013 Act were set out and determined by the UK Government which took no account of Scotland's circumstances in meeting that imposed timetable. The terms of the devolved public service pension schemes in Scotland broadly mirror those being introduced for the counterpart schemes in England and Wales. This has meant that Scottish Government officials could not complete the above instruments until final copies of the counterpart instruments were received. The counterpart regulations for the police scheme were laid at Westminster on 5 March and the firefighters set on 10 March. As a consequence, the above instruments could not be finalised and laid by 3 March – the date required to avoid breaching the 28-day rule.

On 9 March Mr Swinney, Deputy First Minister and Cabinet Secretary for Finance, Constitution and Economy, wrote to the Convener of the Delegated Powers and Law Reform Committee setting out that it would not be possible to meet the 28 day rule for certain instruments. I attach a copy of that letter for information. It has been necessary to seek further confirmation on a number of queries regarding the police scheme regulations, which unfortunately meant that those regulations could not be finalised for 19 March as originally estimated. In addition subsequent to Mr Swinney's letter, the Department of Communities and Local Government, who have responsibility for the firefighters scheme in England, identified that a further short instrument was needed. That additional instrument is amongst those listed in the heading of this letter.

Reforming the five devolved public service pension schemes to a programme and timetable set by the UK Government has required 19 separate instruments and I can confirm that despite those constraints fifteen of those instruments complied with the 28-day rule.

Appendix C

Firefighters' Pension Schemes (Amendment) (Scotland) Regulations 2015 (SSI 2015/141)

On 14 April 2015, the Scottish Government was asked:

1. Section 5(3) of the Public Service Pensions Act 2013 provides that in making regulations establishing a pension board "the responsible authority must have regard to the desirability of securing the effective and efficient governance and administration of the scheme and any connected scheme."

The instrument establishes the Scottish Firefighters' Pension Board. As it is not mentioned in the Policy Note, can the Scottish Government explain whether the Scottish Ministers, in establishing the pension board, have had regard to the desirability of securing the effective and efficient governance and administration of the scheme?

2. Regulation 7 of the instrument amends regulation 59 of the principal 2015 Regulations by inserting new paragraph (2)(ba). Regulation 59(2) of those Regulations provides for the annual rate of retirement pension to be calculated by adding the total of paragraphs (a), (b) and (c). Is paragraph (ba) to be included in this total? If so, please explain where that intention is given effect, or alternatively what the intended effect of the insertion of paragraph (ba) is.

3. Regulation 9 amends regulation 65 of the principal 2015 Regulations by substituting paragraph (3). Substituted sub-paragraph (3)(a) refers to entitlement to payment of a lower tier ill-health pension under “rule 2(2) of the NFPS”. There are a number of rules numbered “2(2)” in various Parts of the NFPS. In the absence of specifying which “rule 2(2)” is being referred to, does the Scottish Government consider the meaning of the provision to be sufficiently clear?

4. Regulation 22(d) inserts new Part 3A in Schedule 2 to the principal 2015 Regulations. Paragraphs 22 and 23 of the new Part 3A refer to “normal pension age under the NFPS”. Can the Scottish Government explain how normal pension age under the NFPS is to be determined, as there appears to be no definition of normal pension age in either the NFPS or the principal 2015 Regulations as amended?

5. In new Part 3B of Schedule 2 to the principal 2015 Regulations (inserted by regulation 22(d) of the instrument), paragraph 26(3) provides that a surviving spouse and civil partner in certain circumstances are not entitled to receive “a bereavement pension under rule E8 of the 1992 Scheme”. Rule E8 of the 1992 Scheme as it applies in Scotland does not appear to make provision about bereavement pensions. Instead it provides for surviving spouses and civil partners’ pensions and allowances to be increased during the first 13 weeks for which they are payable.

Please therefore explain what the effect of paragraph 26(3) of Schedule 2 of the principal 2015 Regulations as amended by this instrument is.

6. In new Part 3B of Schedule 2 to the principal 2015 Regulations (inserted by regulation 22(d) of the instrument), paragraph 28(2) provides that a bereavement pension (for an eligible child) is not payable under rule E8A of the 1992 Scheme. Rule E8A does not appear to extend to Scotland. Please therefore explain the effect of paragraph 28(2) of Schedule 2 as amended by this instrument.

7. In new Part 3C of Schedule 2 to the principal 2015 Regulations (inserted by regulation 22(d) of the instrument), paragraph 38(2)(b) determines the date on which a member is taken to join the scheme (where they decide not to appeal against refusal of an ill-health award) with reference to “the expiry of 28 days from the date on which the member received the last of the documents which the authority is required to supply under rule H2(4) of the 1992 Scheme”.

Rule H2(4) of the 1992 Scheme as it applies in Scotland does not appear to require the authority to provide any documents.

Please therefore explain what the effect of amended paragraph 38(2)(b) of Schedule 2 to the principal 2015 Regulations is, and in particular how the joining date is to be determined in circumstances in which the member decides not to appeal.

8. Part 3 of the instrument (regulations 24 to 31) amends the NFPS as set out in Schedule 1 to the Firefighters' Pension Scheme (S) Order 2007. Throughout Part 3, the text to be inserted in the NFPS refers to "the 2015 Regulations" and "the 2015 Scheme". However no definition of either "the 2015 Regulations" or "the 2015 Scheme" appears to be included in the NFPS.

What does the Scottish Government consider to be the effect of the apparent omission of definitions of "the 2015 Regulations" and "the 2015 Scheme" from the NFPS? Is any corrective action proposed?

9. Similarly, the text to be inserted in the NFPS (by virtue of the amendments in regulations 24 to 31 of this instrument) refers at various points to a "tapered protection member", a "full protection member" and a "protected member" of the NFPS. No definition of these terms appears to be included in the NFPS.

What does the Scottish Government consider to be the effect of the apparent omission of definitions of these terms, and is any corrective action proposed?

10. Regulation 26(i) of the instrument amends rule 9 of the NFPS (commutation: general). Sub-paragraph (ii) inserts new paragraph (1A) in rule 9. The wording of new paragraph (1A) does not appear to make sense. Has some text been omitted and if so, is any corrective action proposed?

11. (a) Regulation 28(a)(ii) of the instrument amends rule 1 of Part 11 of the NFPS by inserting new paragraphs (6) to (8) in that rule. Each of these paragraphs refers to "paragraph 33" of Schedule 2 to the 2015 Regulations. Should the references be to "regulation 32" of Schedule 2 to the 2015 Regulations, and is any corrective action proposed?;

(b) Regulation 28(b)(ii) amends rule 2 of Part 11 of the NFPS by inserting new paragraph (2A) in that rule. New paragraph 2A(b) refers to "paragraph 33(4)" of Schedule 2 to the 2015 Regulations. Should the reference be to "regulation 32(4)" of Schedule 2 to the 2015 Regulations, and is any corrective action proposed?

12. Regulation 34(b) of the instrument inserts new rule B1A in Schedule 2 to the Firemen's Pension Scheme Order 1992 ("the 1992 Scheme").

(a) New rule B1A(3)(a) refers to "the reference to the "pensionable service" in paragraph (1)(a) [of rule B1]". Paragraph (1)(a) of rule B1 does not refer to "pensionable service". Should the reference be to paragraph (1)(b) of rule B1 instead, and is any corrective action proposed?

(b) The wording of new rule B1A(3)(b) does not appear to make sense. Has some text been omitted and if so, is any corrective action proposed?

13. Regulation 34(d) of the instrument inserts new rule B2A in the 1992 Scheme.

(a) Should the reference in that rule to "regulation 65(4)(a)... of the 2015 Regulations" be to "regulation 65(3)(b)" of those Regulations? If so, is any corrective action proposed?;

(b) Should the reference in that rule to "rule B1A(3)(i)" be to "rule B1A(3)(a)" and if so, is any corrective action proposed?

14. Regulation 34(h)(ii) of the instrument inserts new paragraph (1A) in rule B5D of the 1992 Scheme. New paragraph (1A) refers to “paragraph (3)(i) of rule B1A”. Should the reference be to “paragraph (3)(a) of rule B1A”, and is any corrective action proposed?

15. Regulation 38(a)(i) of the instrument inserts new sub-paragraph (ab) in rule F2(1) of the 1992 Scheme. The word “or” is included at the end of new sub-paragraph (ab). Existing sub-paragraphs (a) and (b) of rule F2(1) are followed by the word “and”, so it appears that each period of service mentioned in existing paragraph (1) is intended to be calculated cumulatively. Is the period of service mentioned in new sub-paragraph (ab) also intended to be cumulative, or is it to be included as an alternative to one or more of the other periods of service mentioned in sub-paragraphs (a), (b) and (c) of paragraph (1)? Please explain whether the Scottish Government considers the meaning of the provision to be clear, and why.

16. Regulation 39(a)(ii) of the instrument inserts new paragraphs (9) to (14) in rule G1 of the 1992 Scheme. New paragraphs (9), (10) and (12) each refer to “paragraph 34” of Schedule 2 to the 2015 Regulations. Should the references be to “regulation 33” of Schedule 2 to the 2015 Regulations, and is any corrective action proposed?

The Scottish Government responded as follows:

1. The Scottish Ministers have, in making these Regulations, had regard to the desirability of securing the effective and efficient governance and administration of the scheme and any connected scheme. It is not the practice to make reference to fulfilment of this requirement in the preamble of a relevant instrument.

2. We can confirm that it is intended that the sum referred to in paragraph (ba) is to be included in the calculation. Whilst this should have been made clear, it is not thought that regulation 59 could be read so as to produce any other result. The drafting approach follows that in the Firefighters’ Pension Scheme (England) (Transitional and Consequential Provisions) Regulations 2015 (S.I. 2015/589).

3. The reference should have been to rule 2(2) “of Part 3”. In the absence of any other rule 2(2) in the NFPS dealing with lower tier ill-health pension, it is not considered that the absence of a reference to the applicable Part could cause difficulties.

4. The references to “normal pension age” are being inserted in an instrument made under the Public Service Pensions Act 2013. The phrase will therefore have the meaning set out in that Act (see sections 10(5) and 37). Normal pension age under the NFPS is 60.

5. What is now sub-paragraph (3) in paragraph 26 should not have been included since, as indicated in the question, rule E8 as it has effect in Scotland does not deal with bereavement pensions. The database which was being looked at to establish the current state of the 1992 Order incorrectly lists “England, Wales and Scotland” over the version of rule E8 which applies to Scotland only. The unnecessary paragraph 26(3) causes no harm and will simply have no legal effect. Increases payable under regulation E8 as it has effect in Scotland will be caught by the terms of paragraph 26(2).

6. Similarly, paragraph 28(2) should not have included any reference to rule E8A. The reference is, however, harmless on the basis that no “bereavement pensions” are payable under the 1992 Order as it has effect in Scotland.

7. We agree that the text of paragraph 38(2)(b) does not match up with the terms of rule H2(4) of the 1992 Order. The equivalent provision in S.I. 2015/589 makes reference to “rule H2A” and we are taking matters up with the UK Department for Communities and Local Government as we cannot immediately trace a rule bearing that number in the 1992 Order.

8. Definitions of “the 2015 Regulations” and “the 2015 Scheme” were inserted in rule 2(1) of the NFPS (with effect from 31st March 2015) by article 17(2)(a) of the Firefighters’ Compensation Scheme and Pension Scheme (Amendment) (Scotland) Order 2015 (S.S.I. 2015/143).

9. Definitions of “full protection member” and “tapered protection member” were inserted in rule 2(1) of the NFPS (again with effect from 31st March 2015) by article 17(2)(b) and (i) of S.S.I. 2015/143. It is not thought that “protected member” needs defined.

10. We agree that the wording of new paragraph (1A) does not make sense. We think it likely that the words “may commute a portion of it for a lump sum” should simply be deleted, but are taking this up with DCLG.

11. The references should have been to paragraphs 32 and 32(4) respectively. The text follows that in S.I. 2015/589.

12(a). The reference should have been to rule B1(1)(b). The same error appears in S.I. 2015/589.

12(b). The wording follows that in S.I. 2015/589. As we agree that it does not make sense, we are checking with DCLG as to what the wording should have been.

13(a). Regulation 65(3)(b) should have been referred to.

13(b). The reference should have been to rule B1A(3)(a). The same error appears in S.I. 2015/589.

14. This reference should also have been to rule B1A(3)(a) and again the same error appears in S.I. 2015/589.

15. The word “or” should have read “and”. The text here matches that in S.I. 2015/589.

16. The references should have been to paragraph 33. The same errors are in S.I. 2015/589.

The Scottish Government will deal with identified errors by way of an amending instrument (with retrospective effect as from 1st April 2015).

POLICE PENSION SCHEME (SCOTLAND) REGULATIONS 2015 (SSI 2015/142)

Introduction

17. The purpose of this instrument is to provide for a reformed pension scheme for the Police Service of Scotland.

18. The instrument came into force on 1 April 2015.

19. 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/2015/142/contents/made>

Consultation

20. The policy note on the instrument states that a consultation was undertaken from 11 November 2014 to 6 January 2015. Those consulted included the Chief Constable, police officers, the Scottish Police Federation and relevant Scottish and UK Government Departments.

21. The Scottish Police Federation raised concerns about the increase in Normal Pension Age (NPA) for officers from its current age of 55 to age 60 for the 2015 scheme. To mitigate those concerns discussions were undertaken with stakeholders in Scotland regarding the actuarial reductions applied for early retirement of active members from age 55. The result was to provide more generous actuarial reductions for the 2015 scheme but the cost of this adjustment was off-set by a change in the scheme accrual rate from the original rate of 1/55.3 of pensionable earnings included in the Framework Document to 1/56.1.

22. The Scottish Police Federation also raised concerns about the proposal to keep tiered contribution rates which it did not consider necessary for a CARE scheme. The regulations reflect a single contribution rate for all 2015 members of 13.46% of pensionable earnings which would be reviewed with each scheme valuation.

Delegated Powers and Law Reform Committee consideration

23. The Delegated Powers and Law Reform (DPLR) Committee considered this instrument at its meeting on 21 April 2015 and agreed to draw it to the attention of the Parliament as the drafting appears to be defective in a number of areas.

24. The relevant extract from the DPLR Committee's report on the instrument is reproduced on page 21 of this paper.

Justice Committee consideration

25. If the Committee agrees to report to the Parliament on this instrument, it is required to do so by 18 May 2015.

Policy Note: Police Pension Scheme (Scotland) Regulations 2015 (SSI 2015/142)

The above instrument was made in exercise of the powers conferred by section 1(1) and (2)(g) of, and paragraph 7(b) of Schedule 2 to, the Public Service Pensions Act 2013 ("the 2013 Act"). The instrument is subject to negative procedure.

Policy Objectives

The purpose of this instrument is to provide, in implementation of the 2013 Act, for a reformed pension scheme for the Police Service of Scotland. This instrument and The Police Pensions (Consequential Provisions) (Scotland) Regulations 2015 complete the statutory arrangements for the reformed scheme and provide the necessary transitional arrangements for the current scheme. Occupational pensions policy is reserved to the UK Government. The reforms initially recommended by the Independent Public Service Pensions Commission which was led by Lord Hutton of Furness are now set out in the 2013 Act. The 2013 Act requires Scottish Ministers to introduce a reformed police pension scheme in Scotland from 1 April 2015. This instrument reflects that requirement and introduces a reform scheme which includes a pension based on the member's average career earnings, a normal pension age of age 60 and a deferred pension age equal to the state pension age.

In addition to those changes, Part 3 introduces Scheme Governance with the introduction of a scheme pension board and a scheme advisory board for the Scottish Police Pension Scheme. Part 4 determines scheme membership and Part 5 sets out the operation of a career average scheme. These Parts provide that each member will build up a pension each year calculated at 1/56.1th of the member's pensionable earnings. The pension is held in a pension account and annual indexation is applied through to the member's retirement. Indexation is applied at different rates depending on the member's status in the scheme. An active member receives an annual indexation rate of 1.25 percentage points above the rate of the Consumer Price Index ("CPI") published by Her Majesty's Treasury. A deferred member (someone who was an active member but has left the scheme without applying for benefits) receives an annual indexation equal to the rate of CPI. Part 7 provides details on retirement benefits, including ill health retirement, Part 8 provides for benefits for pension credit members arising from a pension sharing order following the termination of a marriage or civil partnership, Part 9 covers the benefits payable in the case of the death of a member, Part 10 sets out the contributions payable by both scheme members and employers, Part 11 covers transfers into, and out of, the scheme and Part 12 puts in place the measures to control the future costs of the scheme.

Schedules 1 and 2 cover matters surrounding medical decisions and Schedule 3 allows members to purchase Added Pension to increase their benefits from the scheme. Under the terms of the 2013 Act, Schedule 4 outlines transitional arrangements and also protections for members of the existing 1987 and 2006 schemes. In addition to providing full protection to those members who were within 10 years of their scheme's normal pension age as at 1 April 2012, the Regulations also provide full protection for those officers who were within 10 years of being able to claim a full unreduced pension on completion of 30 years' service at that date. Partial protection on a tapered basis is also provided for current scheme members who on 1 April 2012 were between 14 and 10 years from either the scheme's normal pension age or being able to receive a full unreduced pension on completion of 30 years' service. At the end of the tapered protection period the member will automatically move to the 2015 CARE scheme with service accrued in the existing up to that point protected and linked to the individual's final salary at retirement.

Consultation

To comply with the requirements of section 21 of the 2013 Act, a consultation was undertaken from 11 November 2014 and closed on 6 January 2015. Those consulted

included the Chief Constable, police officers, the Scottish Police Federation and relevant Scottish and UK Government Departments.

In line with scheme stakeholders the Scottish Ministers were keen to ensure parity for police officers with the scheme provisions made for police officers in the rest of the United Kingdom. Scottish Government officials were party to policy developments and technical issues at the Police Pensions Technical Working Group on a UK wide basis.

The Scottish Police Federation raised concerns about the increase in Normal Pension Age (NPA) for officers from its current age of 55 to age 60 for the 2015 scheme. To mitigate those concerns discussions were undertaken with stakeholders in Scotland regarding the actuarial reductions applied for early retirement of active members from age 55. The result was to provide more generous actuarial reductions for the 2015 scheme but the cost of this adjustment was off-set by a change in the scheme accrual rate from the original rate of 1/55.3 of pensionable earnings included in the Framework Document to 1/56.1.

The Scottish Police Federation also raised concerns about the proposal to keep tiered contribution rates which it did not consider necessary for a CARE scheme. The regulations reflect a single contribution rate for all 2015 members of 13.46% of pensionable earnings which would be reviewed with each scheme valuation.

A copy of the consultation document and a summary of responses are available on the Scottish Public Pension Agency's website www.sppa.gov.uk.

Impact Assessments

The equality impact assessment has been completed and will be made available in due course. No impact is expected.

Financial Effects

In line with the reform of public sector pensions, these changes will support the introduction of a reform scheme from April 2015 that is designed to ensure long term sustainability and affordability.

Business and Regulatory Impact Assessment

This policy introduces reform to the pension scheme for police officers in Scotland, following recommendations by the Independent Public Service Pensions Commission. This policy does not impose any additional costs or reduce existing costs for business, third or public sector organisations and on that basis no Business and Regulatory Impact Assessment is required for these Regulations.

Scottish Public Pensions Agency
An Agency of the Scottish Government
20 March 2015

Extract from the Delegated Powers and Law Reform Committee 24th Report 2015

1. This instrument provides, in implementation of the Public Service Pensions Act 2013, for a reformed pension scheme for the Police Service of Scotland.
2. The Regulations also outline transitional arrangements and protections for members of existing police pension schemes.

3. The Regulations are subject to the negative procedure and were laid before Parliament on 26 March 2015 before coming into force on 1 April 2015. The Scottish Government has provided a letter to the Presiding Officer, to explain the failure to comply with the “28 day rule”, as set out in section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010. The correspondence (which also relates to SSI 2015/141) is reproduced at Appendix D.

4. In considering the instrument, the Committee asked the Scottish Government for an explanation of certain matters. The correspondence is reproduced at Appendix E. The Scottish Government has acknowledged that there are various drafting errors in the instrument.

5. Regulation 66(3) deals with the basis on which a “selected medical practitioner” must decide that a member of the scheme is permanently medically unfit for engaging in any regular employment, and thus qualifies for an enhanced ill-health pension under the scheme. The practitioner must be of the opinion that (a) the member is unable to perform the ordinary duties of a member of the police force; (b) that inability is likely to continue until normal pension age or death; and (c) the member is unable to engage in regular employment otherwise than as a member of the police force.

6. The regulation does not require the practitioner to form any opinion as to whether the inability to engage in any regular employment otherwise than as a member of the police force is likely to continue until normal pension age or death (i.e. whether the inability is likely to be permanent).

7. Since regulation 66(3) does not appear to set out in full the basis on which a selected medical practitioner must decide that a member is permanently medically unfit for engaging in any regular employment, the Committee raised a query with the Scottish Government (reproduced at Appendix E). The Committee noted also that the equivalent provision (regulation 76(3)) of the counterpart England and Wales regulations (the Police Pensions Regulations 2015, SI 2015/445) does include, at sub-paragraph (d), a requirement that the practitioner is of the opinion that the inability to engage in regular employment is likely to continue until normal pension age or death.

8. The Scottish Government has confirmed that regulation 66(3) should have included an equivalent provision to that set out in sub-paragraph (d) of regulation 76(3) of the counterpart England and Wales regulations. Regulation 66(3) is accordingly defectively drafted. The Scottish Government intends to bring forward a further instrument to correct this error, with retrospective effect as from 1 April 2015.

9. The instrument also contains 6 minor drafting errors, as detailed below. Again, the Scottish Government intends to bring forward a further instrument to correct these errors, with appropriate retrospective effect.

10. The Committee draws the instrument to the Parliament’s attention on the following reporting grounds:

Ground (i)

11. **The instrument’s drafting appears to be defective, in that regulation 66(3) does not include, in error, an equivalent to sub-paragraph (d) of regulation 76(3) of the Police Pensions Regulations 2015 (SI 2015/445), which introduce the counterpart police pension scheme in England and Wales. The effect of this**

error is that regulation 66(3) does not set out in full the basis on which a selected medical practitioner must decide that a member of the scheme is permanently medically unfit for engaging in any regular employment. The regulation should include a provision requiring the practitioner to decide whether the inability is likely to continue until normal pension age or death. The Scottish Government has agreed to address this point by way of an amending instrument, with retrospective effect as from 1 April 2015.

General ground

12. The instrument includes the following minor drafting errors:

- a) In Regulation 132(1), the word “pension” should be added after “adult’s”.
- b) In Regulation 137(5), the reference to “paragraph (3)” should be to “paragraph (4)”.
- c) In Regulation 149(4)(a), the reference to “regulation 159” should be to “regulation 150”.
- d) In Regulation 170(1), the reference to “regulation 174” should be to “regulation 166”.
- e) In Regulation 198(3), the reference to “regulation 115” should be to “regulation 215”.
- f) In Schedule 1, paragraph 1, the reference to “regulation 97” in subparagraph (d) of the definition of medical decision should be to “regulation 96”.

The Scottish Government has agreed to address these points by way of an amending instrument, with retrospective effect as from 1 April 2015.

Ground (j)

13. The instrument fails to comply with the requirements of section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010. The instrument was laid on 26th March 2015 and came into force on 1st April 2015. The very short period of time between laying the instrument and it coming into force has meant that there was no opportunity for scrutiny of the instrument to take place prior to it coming into force.

14. The Committee considers that the breach of the 28-day rule in this case raises a broader issue about the timetabling of instruments which are prepared and laid in parallel with UK instruments which make similar provision. The Committee considers that there is a clear need for projects of this nature to be planned in a way which allows for the procedural requirements of both Parliaments to be met. The Committee considers it to be unsatisfactory that this has not been achieved in the present case. The Committee welcomes, however, the fact that the Minister for Parliamentary Business has undertaken in recent correspondence with the Committee to review the processes for laying instruments in these circumstances and to take steps to improve awareness within the UK Government of the challenges involved. The Committee considers that this work should be undertaken in early course, in order to avoid similar issues arising in the future.

Police Pension Scheme (Scotland) Regulations 2015 (SSI 2015/142)**On 15 April 2015, the Scottish Government was asked:**

1. Regulation 66(3) sets out the basis upon which the selected medical practitioner must decide that a member is permanently medically unfit for engaging in any regular employment. The practitioner must be of the opinion that (a) the member is unable to perform the ordinary duties of a member of the police force; (b) that inability is likely to continue until normal pension age or death; and (c) the member is unable to engage in regular employment otherwise than as a member of the police force. It does not appear that the practitioner is required to form any opinion as to whether the member is permanently unable to engage in regular employment. We note that it is a requirement of the equivalent provision of the England and Wales Regulations that the practitioner is of the opinion that the inability to engage in regular employment is likely to continue until normal pension age or death. Does the Scottish Government consider that regulation 66(3) adequately achieves the policy intention?
2. Regulation 136(3) states that “if an eligible child’s pension is payable in respect of one or two eligible children, the annual rate of eligible child’s pension is equal to 50% of the annual rate of the corresponding surviving adult’s pension”. Is it intended that this annual rate is payable in respect of each child, or in respect of both children together? We note that regulation 136(4), which relates to an eligible child’s pension payable in respect of 3 or more eligible children, makes clear that the relevant annual rate is payable to each eligible child. Does the Scottish Government consider the meaning of the provision in regulation 136(3) to be sufficiently clear?
3. Regulation 2 (Interpretation) defines “description of deferred earned pension” as “(a) deferred standard earned pension; (b) deferred club transfer earned pension;”. We note that the various related definitions of “description of pension” in Regulation 2 are all phrased in the alternative. Is it also the intention that the subparagraphs in this definition are to be read as alternatives, or is some other reading intended? Does the Scottish Government consider the definition to be sufficiently clear?
4. Regulation 132 states that the regulation will apply where “a surviving adult’s becomes payable to a surviving adult who is more than 12 years younger than the member”. Should the word “pension” be added after “adult’s”? Is any corrective action proposed?
5. In Regulation 137(5), should the reference to “paragraph (3)” be to “paragraph (4)” instead? Is any corrective action proposed?
6. In Regulation 149(4)(a), should the reference to “regulation 159” be to “regulation 150” instead? Is any corrective action proposed?
7. In Regulation 170(1), should the reference to “regulation 174” be to “regulation 166” instead? Is any corrective action proposed?
8. Regulation 193(5) defines “the small pensions commutation maximum” as meaning “the amount that is permitted to be commuted having regard to the commutation provisions that apply in the circumstances”. Since the relevant commutation provisions appear to apply a maximum amount that may be commuted, it

appears that the meaning of the definition would be clearer if it referred to the “the maximum amount that is permitted to be commuted having regard to the commutation provisions that apply in the circumstances”. Does the Scottish Government consider that the definition is sufficiently clear?

9. In Regulation 198(3), should the reference to “regulation 115” be to “regulation 215” instead? Is any corrective action proposed?

10. In Schedule 1, in paragraph 1 (Interpretation), should the reference to regulation 97 in sub-paragraph (d) of the definition of “medical decision” be to regulation 96 instead? Is any corrective action proposed?

11. Schedule 4, paragraph 1 (Interpretation) does not give a definition of the term “tapered protection closing date”, although the term is used in the definitions of “closing date” and “transition date”. “Tapered protection closing date” is defined in paragraph 2 (Meaning of tapered protection closing date), however there is no cross-reference to this provision in paragraph 1. Does the Scottish Government consider that the definitions of “closing date” and “transition date” are sufficiently clear?

The Scottish Government responded as follows:

1. Regulation 66(3) should have included an equivalent to sub-paragraph (d) of regulation 76(3) of the Police Pensions Regulations 2015 (S.I. 2015/445).

2. We do consider the meaning of regulation 136(3) to be sufficiently clear. In the event of there being 2 eligible children, each will be entitled to a pension equal to 50% of the annual rate of the corresponding surviving adult’s pension. The result is in line with regulation 136(4) under which the total amount payable as child’s pensions will equate to the corresponding surviving adult’s pension.

3. We do not consider that the absence of an “or” between the paragraphs in the definition of “description of deferred earned pension” will lead to any difficulties in interpretation.

4. The word “pension” has indeed been omitted.

5. The reference should have been to paragraph (4). There is a similar error in regulation 147(5) of S.I. 2015/445.

6. The reference should have been to regulation 150.

7. The reference should have been to regulation 166. This is not, however, of any consequence legally since the reference appears only in the passage describing the content of a regulation being referred to. The error has flowed from the inaccurate title given to regulation 185 of S.I. 2015/445.

8. We do consider the definition to be sufficiently clear. What is “permitted” to be commuted is the maximum amount which can be commuted.

9. The reference should have been to regulation 215.

10. The reference should have been to regulation 96. There is a similar error in the equivalent provision of S.I. 2015/445..

11. None of the definitions in paragraph 1 of Schedule 4 proceed simply by referring forward to another paragraph in the Schedule. Given that, we do not consider that there was any necessity to cross-refer in paragraph 1 to the definition provided within paragraph 2. There is nothing in paragraph 2 to suggest that the definition provided does not apply throughout the Schedule.

The Scottish Government will address points 1, 4 to 7, 9 and 10 above by way of an amending instrument (with retrospective effect as from 1st April 2015).

FIREFIGHTERS' COMPENSATION SCHEME AND PENSION SCHEME (AMENDMENT) (SCOTLAND) ORDER 2015 (SSI 2015/143)

Introduction

26. The purpose of this instrument is to amend Schedule 1 to the Firefighters' Compensation Scheme (Scotland) Order 2006 (S.I. 2006/338) which provides a compensation scheme for firefighters and dependants of firefighters in Scotland in consequence of the coming into force of the Firefighter's Pension Scheme 2015 set out in the Firefighters' Pension Scheme (Scotland) Regulations 2015 (S.I. 2015/19), which deals with the payment of pensions and other benefits to, or in respect of, firefighters employed in Scotland.

27. The instrument came into force in accordance with article 1.

28. 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/2015/143/contents/made>

Consultation

29. The policy note on the instrument states that a consultation was undertaken from 28 January to 19 February 2015. All stakeholders were consulted, including the Fire Brigades Union, Fire Officers Association and relevant Scottish and UK Government Departments. Three responses were received in total, one from an individual and two from firefighters' unions.

Delegated Powers and Law Reform Committee consideration

30. The Delegated Powers and Law Reform (DPLR) Committee considered this instrument at its meeting on 21 April 2015 and agreed to draw it to the attention of the Parliament as it fails to comply with the requirements of section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 (breach of the 28 day rule). The instrument was laid on 26 March 2015 and came into force on 1 April 2015.

31. The DPLR Committee also draws the instrument to the attention of the Parliament on the ground that Article 18, in inserting a new sub-paragraph (11) into rule 1 of Part 2 of the Schedule to the Firefighters' Pension Scheme (Scotland) Order 2007, is defectively drafted. The new sub-paragraph provides that a person is a provisionally enrolled member of the Scheme if the person is "not eligible" to become a provisionally enrolled member pursuant to rule 6C(3) of Part 11. The reference to "not eligible" should be a reference to "not ineligible". The effect of the error is that the provision does not achieve its policy objective. The Scottish Government has undertaken to bring forward a further instrument to correct this error with retrospective effect.

32. The relevant extract from the DPLR Committee's report on the instrument is reproduced on page 32 of this paper.

Justice Committee consideration

33. If the Committee agrees to report to the Parliament on this instrument, it is required to do so by 18 May 2015.

Policy Note: Firefighters' Compensation Scheme and Pension Scheme (Amendment) (Scotland) Order 2015 (SSI 2015/143)

The above instrument was made in exercise of the powers conferred by sections 34 and 60 of the Fire and Rescue Services Act 2004. This instrument is subject to negative procedure.

Policy Objectives

This instrument amends Schedule 1 to the Firefighters' Compensation Scheme (Scotland) Order 2006 (S.I. 2006/338) which provides a compensation scheme for firefighters and dependants of firefighters in Scotland ("the Compensation Scheme") in consequence of the coming into force of the Firefighter's Pension Scheme 2015 ("the 2015 Scheme") set out in the Firefighters' Pension Scheme (Scotland) Regulations 2015 (S.I. 2015/19), which deals with the payment of pensions and other benefits to, or in respect of, firefighters employed in Scotland. The amendments update provisions as a consequence of the coming into force of the 2015 Scheme, to ensure that members of the 2015 Scheme, firefighters eligible to be members of the 2015 Scheme, and their qualifying survivors, receive compensation awards in the event of a qualifying injury or death in service in accordance with the Compensation Scheme.

This Order also amends Schedule 1 to the Firefighters' Pension Scheme (Scotland) Order 2007 (S.I. 2007/199) which sets out the New Firefighters' Pension Scheme (Scotland) ("the 2006 Scheme"). The amendments clarify provisions in the 2006 Scheme:

- extend the period that members can elect to join the modified schemes, by identifying eligible members and extending the period for which they can make an election to pay additional pension contributions during the specified period in respect of their service during the specified period;
- clarify provisions relating to the payment of interest in respect of contributions payable during the period 6 April 2006 and the date that an eligible individual joined the standard 2006 Scheme;
- amend the commutation factors table set out in Annex ZA of the 2006 Scheme to reflect the commutation factors as on 31st March 2014;
- update provisions and terminology as a consequence of the coming into force of the 2015 Scheme;
- revise the 2006 Scheme pensionable pay bands to include a 1% annual uprating covering the period from 1 April 2015 to 31 March 2019.

Firefighters' Compensation Scheme and Pension Scheme (Amendment) (Scotland) Order 2015 (Schedule 1)

Amendment of Part 1 (interpretation)

Part 1 provides definitions for specific terminology used within the Scheme's Regulations and amends Schedule 1 to:

- provide definitions for the additional terms used in respect of members of the 2015 Scheme;
- provide for the "normal pension age" in the 2015 Scheme to be determined by the 2013 Act (section 10), which is currently set at 60 years;

- correct an existing error so that it is clear that the “normal pension age” in relation to the 2006 Scheme is 60 years;
- increase the scope of the definition of “pensionable service” so that it also applies to members of the 2015 Scheme. In addition, the amendments ensures that the provision encapsulates linked service accrued by members of the existing 1992 and 2006 Schemes who subsequently transfer into the 2015 Scheme on or after 1 April 2015;
- increase the scope of the definition of ‘relevant service’ so that it also applies to those individuals who have an entitlement to join the 2015 Scheme but did not make an election to join, in keeping with the current arrangements for persons who are eligible to be members of the 1992 or 2006 Schemes, who have not joined those schemes.

Amendment of Parts 2, 3, and 5 (injury awards and duty related compensation; awards on death)

The Order amends Parts 2, 3 and 5 of the Compensation Scheme, to ensure that the following provisions apply to the members, or eligible members of the 2015 Scheme:

- ‘compensation for death or permanent incapacity while on work’,
- ‘awards on death; spouses and civil partners’, and
- ‘awards on death; additional provisions.’

Amendment of Parts 7 and 7A (servicemen and reservists)

This Order amend Parts 7 and 7A of the Compensation Scheme to ensure that the compensation provisions relating to armed forces’ ‘reservists’ and ‘servicemen’ also apply to members of the 2015 Scheme.

Amendment of Part 8 (special cases)

This Order amends Part 8 of the Compensation Scheme to ensure that the ‘special cases’ provisions also apply to volunteer members employed on or after 1st April 2015. As such, volunteer firefighters who suffer a qualifying injury on or after 1st April are to be treated as whole-time, regular firefighters for the purposes of calculating an injury award. This reflects the current application for volunteer firefighters in respect of the existing 1992 and 2006 Schemes.

Amendment of Part 9 (review, withdrawal and forfeiture of awards)

This Order amends Part 9 of the Compensation Scheme to apply the ‘review, withdrawal and forfeiture of awards’ provisions to members of 2015 Scheme. Part 9 makes provision for the reduction of a 2015 Scheme member’s injury award where the permanent disablement that gives entitlement to the injury award has been caused, or contributed to, by the member’s own default. This is in line with the current application for existing members of the 1992 and 2006 Schemes.

Amendment of Part 10 (payment of awards and financial provisions)

The current ‘prevention of duplication’ provisions are extended to members of the 2015 Scheme. The amendments ensure that where a member of the 2015 Scheme has other separate employments as a firefighter that confer an additional entitlement to join one of the other firefighter pension schemes (namely, any one of the 1992,

2006 or 2015 Schemes), should they subsequently suffer a qualifying injury, they will not receive duplicate injury awards in respect of each employment. This reflects the current application of the provision to members of the existing 1992 and 2006 Schemes.

The amendments also ensure that, where a 2015 Scheme member dies from the effects of a qualifying injury whilst employed as a regular firefighter and retained firefighter, duplicate survivor benefits will not be payable. Where survivor benefits are payable from both the Compensation Scheme and the 2015 Scheme, only the survivor benefits from the 2015 Scheme will be payable. This reflects the current application of the provisions to members of the existing 1992 and 2006 Schemes in the same position.

Amendment of Schedule 1 (injury awards and duty related compensation)

This Order amends Schedule 1 to the Compensation Scheme ensure that where an individual is entitled to an injury award but is not an active member of the 2015 Scheme, the award is determined by reference to the person's 'relevant service'. Effectively, this is the service that the person would have accrued if they had become an active member of the 2015 Scheme. The amendment also ensures that any service, in respect of the same/similar employment, prior to 1st April 2015, where the individual had an entitlement to join either the 1992 or 2006 Schemes, is also to be included as relevant service for the purposes of calculating any injury award entitlement. This reflects the current position for those individuals that have elected not to join the 1992 or 2006 Schemes.

Amendment of Schedules 2, 3 and 4 (awards for spouses and civil partners, awards on death)

This Order ensures that the 'special pension', 'child's special allowance', and 'adult dependent relative's special pension' provisions apply in respect of deceased members of the 2015 Scheme. It also provides for the calculation of the 'special pension', 'child's special allowance' and 'adult dependent relative's special pension' on the basis of the deceased's relevant service where they had an entitlement to join the 2015 Scheme but did not elect to join. This reflects the current position for those individuals that have decided not to join the 1992 or 2006 Schemes.

Changes to the Modified Section of the 2006 Scheme

Following a series of appeals by retained firefighters to the Employment Tribunal and the House of Lords claiming access to the 1992 Scheme under the Part-time Workers (Prevention of Less Favourable Treatment) Regulations (S.I.2000/1551), the 2006 Scheme was amended in April 2014 to introduce a 'modified section'. This is known as the "Modified Scheme" and provides individuals employed as retained firefighters during the period 1 July 2000 and 5 April 2006, with an opportunity to purchase pension benefits in respect of this employment. The benefits provided by the Modified Scheme are comparable to those that are available to members of the 1992 Scheme.

The Modified Scheme requires the application of interest to any retrospective pension or lump sum paid, and on any employee contributions paid in respect of purchasing past service. The current provisions regarding individuals who elect to convert special service to their standard membership, and are required to buy any break in scheme membership between 6 April 2006 and the date they joined the standard 2006

scheme, did not address the interest payable during this period. The amendments reflect the original policy intention.

The amendments to the 2006 Scheme also correct a number of small errors in the commutation factor tables that apply to special members who retire. These corrections ensure that the original policy intention to provide special members with fixed commutation factors – that reflect those in the 1992 Scheme as at 31st March 2014 – is achieved.

Amendment of Part 1 (citation and interpretation)

This Order amends the 2006 Scheme to:

- introduce definitions for specific terminology used in respect of the 2015 Scheme;
- make provision for the ‘limited period’ to end on 1st April 2015 for those individuals that have no transitional protections and that are provisionally enrolled to the Modified Scheme; and for the ‘limited period’ to end on the date that they join the 2015 Scheme in respect of those provisionally enrolled members who have full or tapered protections;
- to clarify references in the definitions of special deferred member, special eligibility criteria, special firefighter member, and special pensioner member;
- to extend the rights provided for civil partners to surviving dependants of same sex marriages.

Amendment of Part 2 (scheme membership, cessation and retirement)

This Order permits provisionally enrolled members to temporarily join the Modified Scheme. Part 2 is also amended to remove the inclusion of a superfluous “a” in rule 2A(2), and to provide clarity that the retrospective award on ill-health retirement being referred to is paid under Part 3 of the 2006 Scheme regulations.

Amendment of Part 11 (pensionable pay, pension contributions and purchase of additional service)

The amendments to this Order:

- remove a superfluous reference to “member” in rule 5A(1) and make a minor adjustment to Rule 6A para 2 amend;
- provide clarity that interest should be payable on any pension contributions owing where a special member converts their standard service in the 2006 Scheme to special pensionable service in the Modified Scheme. This provision was previously inadvertently omitted;
- make provision for individuals that have an eligibility to join the Modified Scheme to be provisionally enrolled for up to a maximum of 6 months, until 30th September 2015, to enable the responsible fire and rescue authority to conclude the options exercise of giving them the opportunity to make an election to join.

Amendment of Annex ZA (commuted portion: special members)

The provisions correct an error in the commutation factors set out in Annex ZA of the 2006 Scheme so that they reflect the commutation factors of the 1992 Scheme as on 31 March 2014, as per original policy intention.

Amendments to the 2006 Scheme contribution bands

This sets out the revised 2006 scheme pensionable pay bands including the 1% annual uprating for the next four years from 1st April 2015. The contribution bands for special members have also been uprated. The figures have been rounded down to the nearest pound to simplify the administration of the scheme. These amendments have been made to Annex A1 (pension contributions) and Annex AB1 (pension contributions for special members).

Consultation

A consultation was undertaken from 28 January to 19 February 2015. All stakeholders were consulted, including the Fire Brigades Union, Fire Officers Association and relevant Scottish and UK Government Departments. Three responses were received in total, one from an individual and two from firefighters' unions. A copy of the consultation document and a summary of responses will be made available on the Scottish Public Pension Agency's website www.sppa.gov.uk.

Impact Assessments

The equality impact assessment has been completed and will be made available in due course. No impact is expected.

Financial Effects

In line with the reform of public service pensions, these changes will support the introduction of a reformed scheme from 2015 that is designed to ensure long-term sustainability and affordability. The changes extend survivor benefits to survivors of same sex marriage and will be reflected in the overall costs of the scheme at each future valuation. It is not anticipated that this will have a material impact on the future contribution rates set by scheme valuations. The estimated required contribution yield from 2006 scheme members for the period April 2015 to March 2019 takes into account the indexation of contribution bands.

Business and Regulatory Impact Assessment

This policy introduces reform to the pension scheme for firefighters in Scotland, following recommendations by the Independent Public Service Pensions Commission. This policy does not impose any additional costs or reduce existing costs for business, third or public sector organisations and on that basis no Business and Regulatory Impact Assessment is required for these regulations.

Scottish Public Pensions Agency
An Agency of the Scottish Government
25 March 2015

Extract from the Delegated Powers and Law Reform Committee 22nd Report 2015**Firefighters' Compensation Scheme and Pension Scheme (Amendment) (Scotland) Order 2015 (SSI 2015/143) (Justice Committee)**

1. This instrument amends the Firefighters' Compensation Scheme (Scotland) Order 2006 ("the 2006 Order") and the Firefighters' Pension Scheme (Scotland) Order 2007 ("the 2007 Order"). The changes are consequential upon the new Firefighters' Pension Scheme, as set out in the Firefighters' Pension Scheme (Scotland) Regulations 2015 ("the 2015 Regulations").

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

3. As was the case with SSI 2015/140, this Order was laid before Parliament on 26 March 2015 and came into force on 1 April 2015. The Scottish Government has provided a letter to the Presiding Officer, to explain the failure to comply with the "28 day rule", as set out in section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 ("ILRA"). The correspondence (which also relates to SSI 2015/143) is reproduced at Appendix F.

4. The Scottish Government has acknowledged in correspondence that the instrument also contains two drafting errors. The first is a patent cross-referencing error as described in paragraph 15 below. The Scottish Government has agreed to bring forward a further instrument to correct this error with appropriate retrospective effect.

5. The second error occurs at Article 18. This inserts a new sub-paragraph (11) into rule 1 of Part 2 of the Schedule to the Firefighters' Pension Scheme (Scotland) Order 2007. The new sub-paragraph sets out the circumstances in which a person will be a provisionally enrolled member of the scheme. It refers to a person being a provisionally enrolled member if he or she is "not eligible" to become such a member. The words "not eligible" should read "not ineligible". The error changes the meaning of the provision with the effect that it does not achieve the intended policy. Article 18 is accordingly defectively drafted. The Scottish Government intends to bring forward a further instrument to correct this error, again with appropriate retrospective effect.

6. **The Committee accordingly draws the instrument to the Parliament's attention on the following reporting grounds:**

General ground

7. **Article 11(2)(b)(iii) inserts a reference to "regulation 166" of the Firefighters' Pension Scheme (Scotland) Regulations 2015 into rule 3(2)(c) of Part 10 of the Schedule to the Firefighters' Compensation Scheme (Scotland) Order 2006. The correct reference should be to "regulation 156" of the 2015 Regulations. The Scottish Government has undertaken to bring forward a further instrument to correct this error, with retrospective effect.**

Ground (i)

Article 18, in inserting a new sub-paragraph (11) into rule 1 of Part 2 of the Schedule to the Firefighters' Pension Scheme (Scotland) Order 2007, is defectively drafted. The new sub-paragraph provides that a person is a

provisionally enrolled member of the Scheme if the person is “not eligible” to become a provisionally enrolled member pursuant to rule 6C(3) of Part 11. The reference to “not eligible” should be a reference to “not ineligible”. The effect of the error is that the provision does not achieve its policy objective. The Scottish Government has undertaken to bring forward a further instrument to correct this error with retrospective effect.

Ground (j)

8. The instrument fails to comply with the requirements of section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010. The instrument was laid on 26 March 2015 and came into force on 1 April 2015. The very short period of time between laying the instrument and it coming into force has meant that there was no opportunity for scrutiny of the instrument to take place prior to it coming into force.

9. The Committee considers that the breach of the 28-day rule in this case raises a broader issue about the timetabling of instruments which are prepared and laid in parallel with UK instruments which make similar provision. The Committee considers that there is a clear need for projects of this nature to be planned in a way which allows for the procedural requirements of both Parliaments to be met. The Committee considers it to be unsatisfactory that this has not been achieved in the present case. The Committee welcomes, however, the fact that the Minister for Parliamentary Business has undertaken in recent correspondence with the Committee to review the processes for laying instruments in these circumstances and to take steps to improve awareness within the UK Government of the challenges involved. The Committee considers that this work should be undertaken in early course, in order to avoid similar issues arising in the future.

Appendix F

Firefighters' Compensation Scheme and Pension Scheme (Amendment) (Scotland) Order 2015 (SSI 2015/143)

On 1 April 2015, the Scottish Government was asked:

1. Article 11 amends Part 10 of the Schedule to the Firefighters' Compensation Scheme (Scotland) Order 2006. Article 11(2)(b)(iii) amends paragraph (2)(c) of rule 3 of Part 10 by inserting a reference to “regulation 166 (guaranteed minimum pension) of the 2015 Regulations”. Should that reference be to regulation 156 of the 2015 Regulations? If so, is corrective action proposed?

2. Article 18 amends Part 2 of the Schedule to the Firefighters' Pension Scheme (Scotland) Order 2007. It inserts a new sub-paragraph (11) into rule 1 of that Part. The new sub-paragraph sets out the circumstances in which a person is a provisionally enrolled member of the Scheme. Those circumstances are: (a) that the person satisfies the conditions in rule 6C(2) of Part 11; and (b) that the person is not eligible to become a provisionally enrolled member pursuant to rule 6C(3) of Part 11. Rule 6C(3) of Part 11 is concerned with ineligibility to become a provisionally enrolled member rather than eligibility, in that a person cannot become a provisionally enrolled member if any one of sub-paragraphs 6C(3)(a) to (c) apply. Does the Scottish Government consider that the reference to a person being “not eligible” in the terms of

rule 1(11) to Part 2 of the Schedule to the 2007 Order should be a reference to “not ineligible”? Is the new rule 1(11) considered to be sufficiently clear in its current form?

The Scottish Government responded as follows:

The Scottish Government is grateful to the Committee for raising these points. We agree that the references should respectively be “regulation 156” and “not ineligible”. The errors will be corrected by an amending instrument (with appropriate retrospective effect).

FIREMEN'S PENSION SCHEME (AMENDMENT NO. 2) (SCOTLAND) ORDER 2015 (SSI 2015/173)

Introduction

34. The purpose of this instrument is to clarify commutation factors for firefighters retiring under the Firemen's Pension Scheme Order 1992.

35. The instrument comes into force on 20 May 2015.

36. 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/2015/173/contents/made>

Consultation

37. The policy note on the instrument states that a formal consultation with representatives of firefighters and employers and relevant Scottish and UK Government departments was undertaken from 31 March 2015 to 15 April 2015.

Delegated Powers and Law Reform Committee consideration

38. The Delegated Powers and Law Reform (DPLR) Committee considered this instrument at its meeting on 28 April 2015 and agreed that it did not need to draw the attention of the Parliament to it on any grounds within its remit.

Justice Committee consideration

39. If the Committee agrees to report to the Parliament on this instrument, it is required to do so by 25 May 2015.

Policy Note: Firemen's Pension Scheme (Amendment No. 2) (Scotland) Order 2015 (SSI 2015/173)

The above instrument was made in exercise of the powers conferred by section 26(1) to (5) of the Fire Service Act 1947 and section 12 and 16 of the Superannuation Act 1972. Functions under these Acts as regards Scotland have been executively devolved to the Scottish Ministers. The instrument is subject to negative procedure.

Policy Objectives

The purpose of this instrument is to clarify commutation factors for firefighters retiring under the Firemen's Pension Scheme Order 1992 ("the 1992 Order").

The 1992 Order provides for voluntary commuted lump sums that must be the actuarial equivalent of the pension being commuted. This is achieved by reference to actuarial factors. In concluding the most recent actuarial valuation of the Firefighters scheme (as at 31 March 2012) a review of these factors by the Government Actuary's Department resulted in lower factors for firefighters in Scotland compared to those available to their counterparts in England.

Scottish Ministers have considered the impact of recent public service pension reforms in the round and the principle of protections for those closest to retirement. They have decided that a form of protection should be provided in relation to changes in the value

of commutation offered to affected officers. Therefore this Order amends the 1992 Order to ensure that commutation is offered at the higher of either the English or Scottish factors. This is applied to commuted lump sums from 21 May 2014 up to and including 31 March 2022. This instrument therefore has retrospective effect.

Consultation

A formal consultation was undertaken from 31 March 2015 to 15 April 2015. The consultation was issued to representatives of firefighters and employers and relevant Scottish and UK Government departments. A summary of consultation responses will be made available on the SPPA website.

Financial Effects

The full cost of the policy will not be known until after 31 March 2022. This is because the number of reviews of actuarial factors up to that date is unknown as is any resulting difference between Scottish and English rates.

Business and Regulatory Impact Assessment

This policy does not impose any additional costs or reduce existing costs for business, third or public sector organisations and on that basis no Business and Regulatory Impact Assessment is required for these Regulations.

Scottish Public Pensions Agency
An Agency of the Scottish Government
21 April 2015

**POLICE PENSIONS (AMENDMENT) (SCOTLAND) REGULATIONS 2015
(SSI 2015/174)**

40. The purpose of this instrument is to clarify commutation factors for police officers retiring under the Police Pension Regulations 1987.

41. The instrument comes into force on 20 May 2015.

42. 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/2015/174/contents/made>

Consultation

43. The policy note on the instrument states that a formal consultation with representatives of police officers and employers, including the Police Negotiating Board, and relevant Scottish and UK Government departments was undertaken from 31 March 2015 to 15 April 2015.

Delegated Powers and Law Reform Committee consideration

44. The Delegated Powers and Law Reform (DPLR) Committee considered this instrument at its meeting on 28 April 2015 and agreed it did not need to draw the attention of the Parliament to it on any grounds within its remit.

Justice Committee consideration

45. If the Committee agrees to report to the Parliament on this instrument, it is required to do so by 25 May 2015.

Policy Note: Police Pensions (Amendment) (Scotland) Regulations 2015 (SSI 2015/174)

The above instrument was made in exercise of the powers conferred by section 1 of the Police Pensions Act 1976. Functions under that Act as regards Scotland have been executively devolved to the Scottish Ministers. The instrument is subject to negative procedure.

Policy Objectives

The purpose of this instrument is to clarify commutation factors for police officers retiring under the Police Pension Regulations 1987 (“the 1987 Regulations”).

Under the 1987 Regulations, the police pension scheme provides for voluntary commuted lump sums that must be the actuarial equivalent of the pension being commuted. This is achieved by reference to actuarial factors. In concluding the most recent actuarial valuation of the police scheme (as at 31 March 2012) a review of these factors by the Government Actuary’s Department resulted in lower factors for police officers in Scotland compared to those available to their counterparts in England and Wales.

Scottish Ministers considered the impact of recent public service pension reforms in the round and the principle of protections for those pension scheme members closest to retirement. They have decided that a form of protection should be available in

relation to changes in the value of commutation offered to affected officers. Therefore these Regulations amend the 1987 Regulations to ensure that commutation is offered at the higher of either the England and Wales or Scottish factors. This is applied to commuted lump sums from 22 May 2014 up to and including 31 March 2022. This instrument therefore has retrospective effect.

Consultation

To comply with the requirements of section 1(1) of the Police Pensions Act 1976, a formal consultation (which included the Police Negotiating Board) was undertaken from 31 March 2015 to 15 April 2015. The consultation was issued to representatives of police officers and employers and relevant Scottish and UK Government departments. A summary of consultation responses will be made available on the SPPA website.

Financial Effects

The full cost of the policy will not be known until after 31 March 2022. This is because the number of reviews of actuarial factors up to that date is unknown as is any resulting difference in rates between Scotland and England.

Business and Regulatory Impact Assessment

This policy does not impose any additional costs or reduce existing costs for business, third or public sector organisations and on that basis no Business and Regulatory Impact Assessment is required for these Regulations.

Scottish Public Pensions Agency
An Agency of the Scottish Government
21 April 2015

ANNEXE A**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.

Guidance on subordinate legislation

Further guidance on subordinate legislation is available on the Delegated Powers and Law Reform Committee’s web page at:

<http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/64215.aspx>

Justice Committee

14th Meeting, 2013 (Session 4), Tuesday 5 May 2015

Subordinate legislation

Note by the clerk

Purpose

1. This paper invites the Committee to consider the following instrument which is not subject to any parliamentary procedure:

- Act of Adjournal (Criminal Procedure Rules Amendment No. 2) (European Protection Orders) 2015 (SSI 2015/121).

Act of Adjournal (Criminal Procedure Rules Amendment No. 2) (European Protection Orders) 2015 (SSI 2015/121)

Introduction

2. The instrument was made under the powers conferred on the Lord Justice General, the Lord Justice Clerk and the Lords Commissioners of Justiciary, by section 305 of the Criminal Procedure (Scotland) Act 1995(a), and all other enabling powers.

3. The purpose of the instrument is to insert a new Chapter 61 (European Protection Orders) into the Criminal Procedure Rules 1996 to make provision in consequence of Directive 2011/99/EU of the European Parliament and of the Council of 18th December 2011 on the European Protection Order.

4. The instrument came into force on 1 April 2015.

5. An electronic copy of the instrument is available at:
<http://www.legislation.gov.uk/ssi/2015/121/contents/made>

Delegated Powers and Law Reform Committee consideration

6. The Delegated Powers and Law Reform (DPLR) Committee considered this instrument at its meeting on 21 April 2015 and agreed to draw the instrument to the attention of the Parliament for the following reasons:

- Paragraph (b) of Form 61.6–B in the Schedule to the instrument appears to be defectively drafted. Paragraph (b) specifies the incorrect maximum penalties on summary conviction which are applicable for an offence under section 234A(4) of the Criminal Procedure (Scotland) Act 1995 as modified by section 254D(2). (Reporting ground (i)). Paragraph (b) should have specified the maximum penalties as 12 months' imprisonment or a fine not exceeding the statutory maximum (or both), instead of 3 months imprisonment or a fine not exceeding level 5 on the standard scale (or both).
- There is a minor drafting error in the new rule 61.9(1) of the Criminal Procedure Rules 1996, as inserted by paragraph 2(2) of this instrument. Rule 61.9(1) provides that the rule applies where the court has to send information to the competent

authority of an issuing state under (among other provisions) rule 61.3(4), but this should refer to rule 61.3(3).

7. The Lord President's Private Office has confirmed that the errors will be corrected by laying an amending instrument before Parliament at the earliest possible opportunity.

8. The relevant extract from the DPLR Committee's report on the instrument is reproduced below (on this page).

Justice Committee consideration

9. The instrument was laid on 19 March 2015 and the Justice Committee has been designated as lead committee.

Procedure

10. This instrument is not subject to any parliamentary procedure. It has been referred to the Committee under Rule 10.1.3 of Standing Orders. However, there is no formal requirement for the Committee to consider it.

11. The Committee has agreed that these types of instruments will not normally be placed on a Committee agenda unless—

- the DPLR Committee has drawn the instrument to the lead committee's attention on technical grounds; or
- a member of the Justice Committee has proposed to the Convener that the instrument goes on the agenda, and the Convener agrees.

12. In addition, where the clerks are aware of particular issues with an instrument not subject to parliamentary procedure, they will draw this to the Convener's attention, for consideration of whether to put it on the agenda.

Recommendation

13. The Committee is invited to note the instrument and make any comment on it. In particular, in light of the concerns raised by the DPLR Committee, the Committee is invited to endorse the conclusions reached in the DPLR Committee's report.

Extract from the Delegated Powers and Law Reform Committee 22nd Report 2015

Act of Adjournal (Criminal Procedure Rules Amendment No. 2) (European Protection Orders) 2015 (SSI 2015/121) (Justice Committee)

1. This instrument adds a new Chapter 61 (European Protection Orders) into the Criminal Procedure Rules 1996. This is to make provision in consequence of Directive 2011/99/EU on the European Protection Order ("EPO").

2. The rules also make procedural provisions in respect of the recognition and implementation of a European Protection Order made in another member State.

3. The instrument came into force on 1 April 2015. It is laid, but not subject to further Parliament procedure.

4. In considering the instrument, the Committee asked the Lord President's Private Office for an explanation of certain matters. The correspondence is reproduced at the Appendix. The Private Office has acknowledged that there are drafting errors in the instrument, in two places. One drafting error is comparatively minor, as set out at paragraph 13 below.

5. In relation to the other error, a new rule 61.6(1) of the Criminal Procedure Rules 1996 is inserted by paragraph 2(2) of this instrument. That sub-paragraph of the new rule provides that a non-harassment order made under section 245D of the Criminal Procedure (Scotland) Act 1995 ("the 1995 Act") is to be made in a Form 61.6-A, which is appended in the Schedule to the instrument. The new rule 61.6(3) provides that where the sheriff must provide information on the order under section 254D(6) of the 1995 Act, it must be done in a Form 61.6-B. Again that Form is appended in the Schedule.

6. The Form 61.6-B notifies the offender, the person who is protected by the non-harassment order, and the "competent authority" of the member State which has issued a European Protection Order under Directive 2011/99/EU, that the order has been made and that breach of the order is an offence. The Form also notifies the maximum penalties for that offence under section 234A(4) of the 1995 Act (as modified).

7. The Lord President's Private Office has acknowledged that paragraph (b) of the Form 61.6-B states the incorrect maximum penalties for the offence, where it is prosecuted on summary conviction rather than on indictment. The paragraph should have specified the maximum penalties as 12 months' imprisonment or a fine not exceeding the statutory maximum (or both), instead of 3 months imprisonment or a fine not exceeding level 5 on the standard scale (or both).

8. The response from the Lord President's Private Office (reproduced in the Appendix) provides a detailed explanation as to how the appropriate maximum penalty levels are arrived at, this being a matter of some complexity.

9. The Committee therefore draws the instrument to the attention of the Parliament on the Committee's reporting ground (i) and on the general ground:

10. Firstly, paragraph (b) of Form 61.6-B in the Schedule to the instrument appears to be defectively drafted. Paragraph (b) specifies the incorrect maximum penalties on summary conviction which are applicable for an offence under section 234A(4) of the Criminal Procedure (Scotland) Act 1995 as modified by section 254D(2). (Reporting ground (i)).

11. Paragraph (b) should have specified the maximum penalties as 12 months' imprisonment or a fine not exceeding the statutory maximum (or both), instead of 3 months imprisonment or a fine not exceeding level 5 on the standard scale (or both).

12. Secondly, there is a minor drafting error in the new rule 61.9(1) of the Criminal Procedure Rules 1996, as inserted by paragraph 2(2) of this instrument. Rule 61.9(1) provides that the rule applies where the court has to send information to the competent authority of an issuing state under (among other provisions) rule 61.3(4), but this should refer to rule 61.3(3). (General reporting ground).

13. **The Lord President's Private Office has confirmed that the errors will be corrected by laying an amending instrument before Parliament at the earliest possible opportunity.**

Appendix

On 25 March 2015, the Lord President's Private Office was asked:

1. The new rule 61.9(1) of the Criminal Procedure Rules 1996 (procedure where competent authority not known), inserted by paragraph 2(2) of this instrument, provides that the rule applies where the court has to send information to the competent authority of an issuing state under (among other provisions) rule 61.3(4).

Is the reference to rule 61.3(4) an error as that sub-paragraph provides that an application may be granted in chambers; and is it intended to refer to 61.3.(3)? If this is agreed to be an error, would corrective action be proposed?

2. Form 61.6-B in the Schedule to the instrument (Form of information regarding a non-harassment order to an offender, protected person or competent authority) provides that conviction of an offence under section 234A(4) of the Criminal Procedure (Scotland) Act 1995 (as modified) may attract the following penalties-

(a) "on conviction on indictment, to imprisonment for a term not exceeding 2 years...." and

(b) "on summary conviction, to imprisonment for a period not exceeding 3 months or to a fine not exceeding *level 5 on the standard scale*...."

It appears however that section 234A(4) of the 1995 Act as amended by section 49 of the Criminal Justice (Scotland) Act 2003 provides in terms that the penalty is-

(a) "on conviction on indictment, to imprisonment for a term not exceeding 5 years...." and

(b) "on summary conviction to imprisonment for a period not exceeding 6 months or to a fine not exceeding *the statutory maximum*...."

Accordingly—

(i) Given the discrepancy between the terms of the Form and the apparent terms of section 234A(4) as amended in respect of the maximum penalties, would you agree that the Form contains errors? Otherwise please explain why the terms of the Form are considered appropriate?

(ii) Is it considered that, in relation to the maximum period of imprisonment on summary conviction stated in section 234A(4), that section 45 of the Criminal Proceedings etc. Reform (Scotland) Act 2007 has the effect that this is to be read (as a result of a glossing modification) as a reference to 12 months? If so, should that maximum period have been specified in the Form?

(iii) If there is error, would corrective action be proposed?

The Lord President's Private Office responded as follows:

Question 1

We are grateful to the Committee and its legal advisers for drawing this matter to our attention. We agree that there is a cross-referencing error in new rule 61.9(1) where it refers to rule 61.3(4) – as indicated, that reference should properly be to rule 61.3(3). This will be corrected by amendment at the next available opportunity which, standing our response to question 2, is likely to be in the near future.

Question 2

Section 254D(1) of the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”), as inserted by the European Protection Order (Scotland) Regulations 2015, provides that the sheriff must make a non-harassment order on recognising a European Protection Order under section 254C(2). Our interpretation is that this is a new species of non-harassment order, distinct from those imposed under section 234A, and this view is bolstered by the fact that, while subsections (4), (4A) and (4B) are applied to section 254D non-harassment orders, the other provisions of section 234A are not – bespoke provision is instead made in subsections (4) to (8) of section 254D.

Section 254D(3) applies section 234A(4A) and (4B) (powers of arrest) without modification. However, section 254D(2) applies section 234(4) (the offence and penalty provision) subject to the restrictions in paragraph 1(1)(d) of Schedule 2 to the European Communities Act 1972 (“the 1972 Act”). As section 254D(2) was inserted into the 1995 Act by regulations made under section 2(2) of the 1972 Act, we understand that the restrictions in paragraph 1(1)(d) operate so as to limit the maximum penalties that may be imposed following conviction under section 234A(4) as modified by section 254D(2). Accordingly, this explains why the maximum penalties mentioned in Form 61.6–B do not mirror those in section 234A(4) as amended by section 49 of the Criminal Justice (Scotland) Act 2003 – those penalties are higher than the maxima permitted by the 1972 Act. In particular, the maximum period of imprisonment on conviction on indictment is, in our view, restricted from 5 years (section 234A(4)) to 2 years.

Initially, we had thought that the penalties on summary conviction were similarly limited to the maxima specified in paragraph 1(1)(d). Regrettably, however, this office had not identified the effect of sections 45 and 47 of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 on a) section 234A(4) of the 1995 Act or b) section 2(2) of the 1972 Act. We are grateful to the Committee and its legal advisers for drawing section 45 to our attention. Following further analysis, our view is now that the maximum penalties that may be imposed following summary conviction under section 234A(4) as applied by section 254D(2) of the 1995 Act are 12 months' imprisonment or a fine not exceeding the statutory maximum, or both.

This office accepts that Form 61.6–B is accordingly incorrect insofar as it purports to specify the maximum penalties applicable on summary conviction. We propose to correct the error by amendment at the earliest possible opportunity, and will therefore lay an amending instrument as soon as is practicable.