DELEGATED POWERS AND LAW REFORM COMMITTEE

AGENDA

17th Meeting, 2018 (Session 5)

Tuesday 15 May 2018

The Committee will meet at 10.00 am in the Adam Smith Room (CR5).

1. **Decision on taking business in private:** The Committee will decide whether to take items 4, 5 and 6 in private.

2. **Instruments subject to affirmative procedure:** The Committee will consider the following—

   *Scottish Fiscal Commission (Modification of Functions) Regulations 2018 [draft]*.

3. **Instruments subject to negative procedure:** The Committee will consider the following—

   *Local Government Pension Scheme (Scotland) Regulations 2018 (SSI 2018/141); Town and Country Planning (General Permitted Development) (Scotland) Amendment Order 2018 (SSI 2018/142).*

4. **Age of Criminal Responsibility (Scotland) Bill:** The Committee will consider its approach to the delegated powers provisions in this Bill at Stage 1.

5. **Management of Offenders (Scotland) Bill:** The Committee will consider further the delegated powers provisions in this Bill at Stage 1.

6. **Islands (Scotland) Bill:** The Committee will consider the delegated powers provisions in this Bill after Stage 2.

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The papers for this meeting are as follows—

**Agenda Items 2 and 3**

Briefing on Instruments (private) DPLR/S5/18/17/1(P)

**Agenda Item 3**

Instrument Responses DPLR/S5/18/17/2

**Agenda Item 4**

*Age of Criminal Responsibility (Scotland) Bill - As Introduced*

*Age of Criminal Responsibility (Scotland) Bill - Explanatory Notes*

*Age of Criminal Responsibility (Scotland) Bill - Delegated Powers Memorandum*

Briefing Paper (private) DPLR/S5/18/17/3(P)

**Agenda Item 5**

*Management of Offenders (Scotland) Bill - As Introduced*

*Management of Offenders (Scotland) Bill - Delegated Powers Memorandum*

Briefing Paper (private) DPLR/S5/18/17/4(P)

**Agenda Item 6**

*Islands (Scotland) Bill - As Amended*

*Islands (Scotland) Bill - Supplementary Delegated Powers Memorandum*

Briefing Paper (private) DPLR/S5/18/17/5(P)
DELEGATED POWERS AND LAW REFORM COMMITTEE

17th Meeting, 2018 (Session 5)

Tuesday 15 May 2018

Instrument Responses

INSTRUMENTS SUBJECT TO NEGATIVE PROCEDURE

Local Government Pension Scheme (Scotland) Regulations 2018 (SSI 2018/141)

On 4 May 2018, the Scottish Government was asked:

1. The effect of section 23(4) of the Public Service Pensions Act 2013 is to require the Scottish Ministers to lay a report before the Scottish Parliament in a case falling within section 23(1) or (2).

Regulation 1(2) provides that regulation 18(7) has retrospective effect from 1st April 2015. Regulation 18(7) provides that if a member dies before repayment of the deferred refund, these shall be treated as a lump sum death benefit for the purposes of Part 2 of schedule 29 of the Finance Act 2004 and taxed accordingly.

Please explain why it is considered that this does not have significant adverse effects in relation to the pension payable to or in respect of members of the scheme or in any other way in relation to members of the scheme in terms of section 23(1) or (2) of the 2013 Act. In particular, why is it considered that the imposition of such a tax retrospectively is not a significant adverse effect?

2. Regulation 1(2) also provides that regulation 30(2) (award of additional pension) has retrospective effect from 1 April 2015. Please explain why it is considered appropriate that similar provision made in regulation 16(6) (additional pension contributions) does not apply retrospectively from 1 April 2015.

3. Regulation 3(3) provides that in the specific circumstances set out there a person becomes an active member on "whichever is the earliest" of sub-paragraphs (a) to (c). Should regulation 3(5) similarly provide that in the specific circumstances set out there a person becomes an active member on whichever is the earliest of sub-paragraphs (a) or (b)?

4. Regulation 3(7)(d) cross-refers to "regulation 89 (forfeiture of pension rights after conviction for employment-related offences)". Should this cross-reference instead be to regulation 86?

5. The first line after regulation 17(12)(e) states that "the appropriate administering authority shall, at its absolute discretion, decide that any life assurance sum due under sub-paragraph (a), and the realisable value of any arrangement under sub-paragraphs (b) to (e), should be paid to or for the benefit of the member's nominee, personal representatives or any person appearing to the authority to have been a relative or dependent of the member."
By way of contrast, regulations 38(2), 41(2), and 44(2) provide that "The administering authority may, at its absolute discretion, pay the death grant to or for the benefit of the member's nominee, personal representatives or any person appearing to the authority to have been a relative or dependent of the member."

(a) Is it intended that in the circumstances of regulation 17(12)(e) the appropriate administering authority must decide that the sums referred to should be paid, but that the recipient of those sums is at the discretion of the administering authority; but that in the circumstances of regulations 38(2), 41(2) and 44(2) the administering authority has discretion both as to whether to pay and, if so, who the recipient will be?

(b) Could the duties and discretion of the appropriate administering authority be clearer in regulation 17(12)(e)?

6. Regulation 20(2)(l) refers to "the SDS Scheme". However, that term is not defined. What does that term mean and should it be made clearer?

7. In regulation 22(10)(b), should the reference to regulation 2(3) of the TUPE Regulations be to regulation 3 of those Regulations?

8. Regulation 41(4) provides that regulation 41 applies to pension credit members as it applies to deferred members with the modification that for the amount of death grant calculated under paragraph (3), the amount calculated under paragraph (3)(a) and (b) is multiplied by 5.

Please explain how this differs from what regulation 41(3) already provides in relation deferred members, given that that provision already refers to multiplying the amount by 5 based on the assumptions in sub-paragraphs (a) and (b).

9. Regulation 43(11) provides that additional pension purchased under regulation 16 is not excluded for the purposes of paragraph (4)(c) if certain circumstances apply. Should reference also be made to paragraph (5)(c), (9)(c) and (10)(c) (c.f. regulation 40(11))?  

10. Should the reference to regulation 17(7)(b)(i) in regulation 45(4)(e) be to regulation 17(6)(b)(i)?

11. The "appropriate fund" is referred to in regulation 51(3), with reference to the funds specified in schedule 4. However "appropriate fund" also appears in regulations 19, 61, 62, 63, 67, 83, 87, 92 and 93. Should therefore a definition of "appropriate fund" in schedule 1 (interpretation) have been included?

12. Similarly, a "rates and adjustment certificate" is referred to in regulation 60(4), but this expression also appears in regulations 15, 52, 60 (in other places), 61, and paragraph 6 of schedule 4. Should therefore a definition of "rates and adjustment certificate" have been included in schedule 1?
The Scottish Government responded as follows:

In answer to question 1, the drafting of consolidated regulation 18 of the 2014 regulations did not make clear the tax position in relation to a lump sum death benefit. The new wording of regulation 18(7) makes the position clear. No rights are affected and the tax position remains the same; so section 23(4) of the Public Pensions Act 2013 is not engaged.

In answer to question 2, the back dating of regulation 30(2) is probably not needed given the terms of section 15(2)(b) of the Interpretation and Legislative Reform (Scotland) Act 2010 but makes clear that rights start to accrue on 1st April 2015. Regulation 16(6) would also be covered by section 15(2)(b) of the Interpretation and Legislative Reform (Scotland) Act 2010 and is about liabilities; so no need for extra clarification that goes beyond section 15(2)(b).

In answer to question 3, SG does not agree with the suggestion. Regulation 3(3) applies to the employer’s responsibilities, whereas 3(5) offers a choice for the employee at any time when they are not a member (couch in these terms to allow for the administrative process). This is underpinned by the over-arching automatic enrolment regulations which apply on the ‘auto enrolment’ date.

In answer to question 4, SG agrees need for change and proposes to do this by a correction slip. An obvious typing error has been made given the terms of the heading of regulation 86 and therefore no confusion is likely to arise if a correction slip fixes the problem.

In answer to question 5, SG thinks that no change of wording is required. The discretion in relation to AVCs extends only to who the recipient is meant to be. On the other death grants the discretion covers recipient and whether it is paid at all. Without there being this complete discretion, a death grant can be caught by inheritance tax.

In answer to question 6, SG are of the view that SDS means Skills Development Scotland and is a well-known acronym and does not need to be defined. It is not defined in the 2014 regulation.

In answer to question 7, it is accepted by SG that “regulation 2(1) and (3) should read “regulation 2(1) and 3””. It is proposed to change this by correction slip. Reading the 2006 TUPE regulations can give no other reading.

In answer to question 8, it is accepted by SG that the wording is infelicitous because there is no modification of position. The infelicity came in with regulation 24(c) of the Local Government Pension Scheme (Scotland) Amendment Regulations 2015, which changed a previous multiplier from 3 to 5. It is not proposed to change this.

In answer to question 9, it is accepted by SG that the reference is wrong and will be altered by correction slip. It is an obvious typing error and any one consulting regulation 43(10A) of the original consolidated instrument would recognise this.

In answer to question 10, it is accepted by SG that the reference is wrong and will be altered by correction slip. It is an obvious typing error and any one consulting regulation 17 would not be confused. It is also clear from original consolidated instrument.
In answer to question 11, it is accepted by SG that having a definition in schedule 1 would have been perhaps a neater way of drafting but because the instrument is a consolidating instrument the original text was followed. Regulation 51 deals with administering authorities which is also an appropriate place for a definition of this type.

In answer to question 12, it is accepted by SG that having a definition in schedule 1 would have been perhaps a neater way of drafting but because the instrument is a consolidating instrument the original text was followed. Regulation 60(4) deals with actuarial matters which is also an appropriate place for a definition of this type.