



The Scottish Parliament  
Pàrlamaid na h-Alba

## Official Report

# DELEGATED POWERS AND LAW REFORM COMMITTEE

Tuesday 17 March 2015



---

**Tuesday 17 March 2015**

**CONTENTS**

	<b>Col.</b>
<b>DECISION ON TAKING BUSINESS IN PRIVATE .....</b>	<b>1</b>
<b>INSTRUMENT SUBJECT TO AFFIRMATIVE PROCEDURE .....</b>	<b>1</b>
Scottish Marine Regions Order 2015 [Draft] .....	1
<b>INSTRUMENTS SUBJECT TO NEGATIVE PROCEDURE.....</b>	<b>3</b>
Local Government Pension Scheme (Scotland) Amendment Regulations 2015 (SSI 2015/87) .....	3
Reservoirs (Scotland) Regulations 2015 (SSI 2015/90).....	3
National Health Service Pension Scheme (Scotland) Regulations 2015 (SSI 2015/94).....	4
National Health Service Pension Scheme (Transitional and Consequential Provisions) (Scotland) Regulations 2015 (SSI 2015/95) .....	6
National Health Service Superannuation Scheme (Miscellaneous Amendments) (Scotland) Regulations 2015 (SSI 2015/96) .....	7
Teachers' Pension Scheme (Scotland) Amendment Regulations 2015 (SSI 2015/97) .....	7
Teachers' Superannuation (Scotland) Amendment Regulations 2015 (SSI 2015/98).....	8
Food (Scotland) Act 2015 (Consequential and Transitional Provisions) Order 2015 (SSI 2015/100) .....	9
National Health Service (Clinical Negligence and Other Risks Indemnity Scheme) (Scotland) Amendment Regulations 2015 (SSI 2015/102).....	10
Alien and Locally Absent Species in Aquaculture (Scotland) Regulations 2015 (SSI 2015/103) .....	10
<b>INSTRUMENTS NOT SUBJECT TO PARLIAMENTARY PROCEDURE.....</b>	<b>11</b>
Food (Scotland) Act 2015 (Commencement) Order 2015 (SSI 2015/99) .....	11
Children and Young People (Scotland) Act 2014 (Commencement No 8 and Saving Provision) Order 2015 (SSI 2015/104) .....	11

---

**DELEGATED POWERS AND LAW REFORM COMMITTEE**

**10<sup>th</sup> Meeting 2015, Session 4**

**CONVENER**

\*Nigel Don (Angus North and Mearns) (SNP)

**DEPUTY CONVENER**

\*John Mason (Glasgow Shettleston) (SNP)

**COMMITTEE MEMBERS**

\*Margaret McCulloch (Central Scotland) (Lab)

\*John Scott (Ayr) (Con)

\*Stewart Stevenson (Banffshire and Buchan Coast) (SNP)

\*attended

**CLERK TO THE COMMITTEE**

Euan Donald

**LOCATION**

The Sir Alexander Fleming Room (CR3)



# Scottish Parliament

## Delegated Powers and Law Reform Committee

*Tuesday 17 March 2015*

*[The Convener opened the meeting at 11:30]*

### Decision on Taking Business in Private

**The Convener (Nigel Don):** I welcome members to the 10th meeting in 2015 of the Delegated Powers and Law Reform Committee. I ask everyone to turn off mobile phones, please.

Under agenda item 1, it is proposed that we take item 5, which is consideration of the committee's third quarterly report for the parliamentary year 2014-15, in private. Does the committee agree to take that item in private?

**Members indicated agreement.**

### Instrument subject to Affirmative Procedure

#### Scottish Marine Regions Order 2015 [Draft]

11:31

**The Convener:** No points have been raised by our legal advisers on the draft order. There is, however, an issue that, while it is not a matter for this committee, we might wish to draw to the attention of the lead committee.

The boundary between Scottish and English waters within the territorial sea is set out in the Scottish Adjacent Waters Boundaries Order 1999, and it forms the boundary of the Scottish marine area under the Marine (Scotland) Act 2010, which is the parent act under which this order is made. The order therefore uses the 1999 order to describe the limit of the Solway marine region.

In conceptual terms, the landward limit of the territorial sea is the mean high water mark of spring tides. It is a recognised feature of estuarial areas such as the River Esk within the Solway area that that limit can change from time to time. One of the purposes of the 1999 order was to provide a defined boundary that would not change. However, examination of a high-resolution map of the area as it now stands shows that the boundary line that was set in the 1999 order does not extend fully to the point that is now reached by the mean

high spring tide. It appears that the 1999 order boundary is out of date in that respect.

The effect appears to be that there is a small part of the boundary line for the sea within the Solway marine region that cannot be fully delineated by the order. Does the committee agree to draw the matter to the attention of the lead committee?

**Members indicated agreement.**

**Stewart Stevenson (Banffshire and Buchan Coast) (SNP):** We should certainly do that. I looked up the map just before I came to the committee because I wanted to explore the issue in more detail. I found that an additional line has been inscribed on the map that takes the current end of the line, which is a couple of hundred metres short of meeting the Scotland and England border, and joins that point to an extension of the boundary that comes down the River Sark, thus filling that gap on the map.

I recognise that that has no effect on the legislative expression of the boundary, but at least it suggests that the issue that we are talking about has been recognised, and an attempt has been made on the map to reflect what would be sensible. We should ensure that, when we communicate with the lead committee, which I agree we should do, we at least draw that to its attention. That might enable it to pursue on what basis officials have added that bit of line, which is sensible in practice if not necessarily in law.

**John Scott (Ayr) (Con):** I agree with Stewart Stevenson. We should write to the Rural Affairs, Climate Change and Environment Committee. I commend the investigative qualities of my colleague Stewart Stevenson for having been so diligent as to discover that fact. In law, 200m is a significant distance, and it is entirely appropriate that the matter is drawn to the attention of the Rural Affairs, Climate Change and Environment Committee.

## Instruments subject to Negative Procedure

### Local Government Pension Scheme (Scotland) Amendment Regulations 2015 (SSI 2015/87)

11:34

**The Convener:** A number of points have been raised on the amendment regulations by our legal advisers.

First, the drafting appears to be defective in that there are two errors that the Scottish Government has acknowledged to be errors and that the committee may consider impede the intended operation of the regulations or fail to give effect to the policy intention. The committee may therefore wish to report the regulations on ground (i), as the drafting appears to be defective.

Secondly, there are two further provisions the meaning of which could be clearer. Accordingly, the committee may wish to report the regulations under reporting ground (h).

Finally, there are a further five drafting errors that the committee may consider, on balance, do not impede delivery of the Government's policy intentions but fall to be reported under the general ground.

Does the committee therefore agree to draw the regulations to the attention of the Parliament under reporting grounds (i) and (h) and the general reporting ground?

**Members indicated agreement.**

**The Convener:** The committee may wish to note that the Scottish Government has indicated that the errors will be corrected by an amending instrument, to be made after 1 April 2015 but having retrospective effect from that date.

### Reservoirs (Scotland) Regulations 2015 (SSI 2015/90)

**The Convener:** Regulation 10 specifies the period of appointment of engineers as additional information that must be set out in the controlled reservoirs register. However, section 9(2)(f) of the Reservoirs (Scotland) Act 2011 already requires that information to be included in the register. The additional specification of an existing legal requirement is not necessary and could cause confusion.

The committee may consider that, when a statutory charge is imposed, the person on whom it is to be imposed should be clearly identified. Regulation 17(2) could more clearly distinguish the

liability of the former manager for payment of the cessation fee from the liability of the new manager for payment of the new manager fee.

Does the committee therefore agree to draw the regulations to the attention of the Parliament under reporting ground (h), as the meaning of regulations 10 and 17 could be clearer?

**Members indicated agreement.**

**John Scott:** I am not certain whether the Government intends to do anything about the issue in relation to regulation 17(2), which I find disappointing. It is quite a serious error, in as much as the liability for who pays what is definitely unclear. I am disappointed that, from my understanding, the Government is not prepared to do anything about that.

**The Convener:** Maybe we could roll that up with other issues.

Regulation 8 is intended to specify the structures that are road and railway embankments. However, the expression "roads and railway embankments", which has a different natural meaning, is used in error.

Does the committee therefore agree to draw the regulations to the attention of the Parliament under the general ground, as there is a drafting error in regulation 8?

**Members indicated agreement.**

**The Convener:** The Government has agreed to address the matters reported in relation to regulations 8 and 10 at the next opportunity. To follow on from what John Scott has said, the committee may wish to ask the Government to clarify the drafting of regulation 17(2) at the same time.

**Members indicated agreement.**

**John Scott:** That would be very welcome.

### National Health Service Pension Scheme (Scotland) Regulations 2015 (SSI 2015/94)

**The Convener:** A number of points have been raised on the regulations by our legal advisers.

First, the drafting of the regulations appears to be defective in that there are seven errors that the Scottish Government has acknowledged to be errors and that the committee may consider impede the intended operation of the regulations or fail to give effect to the policy intention. The committee may therefore wish to report the instrument on ground (i), as its drafting appears to be defective.

There is a further provision the meaning of which could be clearer. Accordingly, the

committee may wish to report the instrument under reporting ground (h).

There are a further seven drafting errors that the committee may consider, on balance, do not impede delivery of the policy intentions but fall to be reported under the general ground.

Does the committee therefore agree to draw the regulations to the attention of the Parliament under reporting grounds (i) and (h) and the general reporting ground?

**Members indicated agreement.**

**The Convener:** The committee may wish to note that the Scottish Government has indicated that the errors will be corrected by an amending instrument to be made after 1 April 2015 but having retrospective effect from that date.

The committee may also wish to note that, although the Scottish Government has explained in its response the limited timing available for the drafting and completion of the regulations, it is very unsatisfactory for the instrument to have been laid before the Parliament containing the number of errors identified above. In particular, several of the errors relate to discrepancies in defined expressions, the omission of definitions or omitted or patently incorrect wording, which, it appears, should have been picked up by the Scottish Government checking procedures.

Do members have any comments?

**John Mason (Glasgow Shettleston) (SNP):** You used the phrase “limited timing available”. I assume that that starts with the Treasury and that the timing is not entirely under the control of the Scottish Government. I accept that that does not excuse the Scottish Government entirely; others might want to comment on that.

If we recognise that the Treasury has not allowed sufficient time, how can we encourage it to allow sufficient time in future?

**The Convener:** I think that the point is fairly made.

**John Scott:** Without wishing to be unreasonable, I think that it is fair to say that the Scottish Government is liable for getting right its workload on all the instruments on pension provision. In my view, it would have been reasonable for it to have foreseen the need to make provision for the instruments to be properly checked at the appropriate time, albeit that that might have involved a truncated timescale. It is fair to say that the instruments are a mess and that quality control procedures do not appear to have been put in place, or any such procedures that have been put in place are not working—take your pick.

It appears to be falling to our highly valued clerks and legal advisers to pick up the elementary mistakes that the quality control procedures that the Scottish Government allegedly has in place should pick up. That burden should not be placed on our legal advisers.

**John Mason:** I suppose that I am asking how we can change this for the future. Is it just totally out of our control to do that? Can we encourage the Government to speak to the Treasury? I presume that we cannot speak to the Treasury directly.

**The Convener:** I think that your suggestion about us encouraging the Government to speak to the Treasury is right, because the Treasury is not responsible to us and would not respond to us. The obvious thing to do is to write to the Minister for Parliamentary Business to point out things that he will already know and to encourage him to try to get a better working relationship with the United Kingdom Government. Fundamentally, it is an issue of timing.

**John Mason:** Absolutely.

**The Convener:** Do members agree to write to the Minister for Parliamentary Business about the collection of errors in all these instruments?

**John Scott:** Yes, I certainly agree that we should do that. Throughout the instruments in question, there is a series of errors that are not hugely complicated but should have been picked up in the quality control process. The fact that they do not appear to have been picked up leads me to the conclusion that the quality control process has not been used.

**The Convener:** In which case, we will write accordingly.

### **National Health Service Pension Scheme (Transitional and Consequential Provisions) (Scotland) Regulations 2015 (SSI 2015/95)**

**The Convener:** The regulations contain a minor drafting error, as regulation 38(1) refers in two places to “transitional member” rather than “transition member”, which is the expression that is defined in regulation 2.

Does the committee therefore agree to draw the regulations to the attention of the Parliament on the general ground?

**Members indicated agreement.**

**The Convener:** The committee may wish to note that the Government has undertaken to address the error by way of an amending instrument, as and when the regulations are subsequently amended for another purpose.

### **National Health Service Superannuation Scheme (Miscellaneous Amendments) (Scotland) Regulations 2015 (SSI 2015/96)**

**The Convener:** The drafting of the regulations appears to be defective in two places. First, there is an error in regulation 25(a), as the provision should have inserted

“for the scheme year 2015-16”

instead of

“for the scheme year 2014-15”

in regulation 2.C.2 of the National Health Service Superannuation Scheme (2008 Section) (Scotland) Regulations 2013 (SSI 2013/174).

Secondly, regulation 25(c) omits regulation 2.C.2(3) and (4) of the principal 2013 regulations. An error has been made, as regulation 2.C.2(5) has been retained. It refers to the determination of pay bands and contribution rates by the Scottish ministers in respect of each scheme year in accordance with the omitted provision in regulation 2.C.2(4). Regulation 2.C.2(5) provides that, before determining those bands or rates, the Scottish ministers must consider the advice of the scheme actuary.

Does the committee therefore agree to draw the regulations to the attention of the Parliament on reporting ground (i), as the drafting appears to be defective?

**Members indicated agreement.**

**The Convener:** The committee may wish to note that the Scottish Government has undertaken to correct the errors by means of an instrument that would further amend the National Health Service Superannuation Scheme (2008 Section) (Scotland) Regulations 2013. The instrument would be made after 1 April but have retrospective effect from that date.

### **Teachers' Pension Scheme (Scotland) Amendment Regulations 2015 (SSI 2015/97)**

11:45

**The Convener:** In the amendment that is made by regulation 32(a) of the instrument, the reference to

“if sub-paragraph (1) or (2) applies”

should read

“if sub-paragraph (1A) or (1B) applies”.

Does the committee therefore agree to draw the instrument to the attention of the Parliament on the general reporting ground, as it contains a minor drafting error?

**Members indicated agreement.**

**John Scott:** I would be grateful if that error could also be corrected. The note that we have suggests that the Scottish Government has “undertaken to correct” the error in the instrument. However, I believe that all the instruments should be corrected at the same time, and not haphazardly. The notes for the different instruments appear to suggest that some instruments will be corrected as a matter of urgency and some will not. I suggest that the instruments are all reviewed and corrected at the same time; we would then have pension schemes that are fit for purpose.

**The Convener:** Indeed. I am sure that John Scott will recognise that the corrections will not all come through in the same amending regulation—

**John Scott:** Of course.

**The Convener:** But I take his point.

### **Teachers' Superannuation (Scotland) Amendment Regulations 2015 (SSI 2015/98)**

**The Convener:** Three minor drafting errors have been identified in relation to the instrument by our legal advisers.

First, in the amendment that is made by regulation 5, the inserted text should read:

“regulations G6, G12, G17 or G23”

instead of

“regulations G6, G12, G17 and G23”.

Secondly, the amendment made by regulation 11(b) should substitute a reference to

“regulation G9, G14, G21 or G24”,

not

“regulation G8(2), G13(2), G20(2) or G24(3)”.

Finally, regulation G24, inserted by regulation 13, should cross-refer to part 3 of schedule 12, and not to part 2 of that schedule.

Does the committee therefore agree to draw the instrument to the attention of the Parliament under the general reporting ground as it contains three minor drafting errors?

**Members indicated agreement.**

**The Convener:** The committee may wish to note that the Scottish Government has undertaken to address those errors by way of an amending instrument.



### **Food (Scotland) Act 2015 (Consequential and Transitional Provisions) Order 2015 (SSI 2015/100)**

**The Convener:** Article 2, when read with paragraph 8 of the schedule, directs an amendment to the definition of “the Agency” in regulation 2(1) of the Genetically Modified Organisms (Deliberate Release) (Scotland) Regulations 2002.

It appears that the amendment should, however, be to the definition of “the Food Standards Agency”. It further appears that to substitute the term “Food Standards Scotland” for “Food Standards Agency” within that definition renders it insensible. That is because “the Food Standards Agency” is defined as

“the Food Standards Agency as established under section 1 of the Food Standards Act 1999”.

The definition does not work with the substituted words “Food Standards Scotland”, as the latter body is established under the Food (Scotland) Act 2015.

Does the committee therefore agree to draw the instrument to the Parliament’s attention under reporting ground (i), as it appears to be defectively drafted?

**Members indicated agreement.**

**The Convener:** Some further points have been raised on the instrument by our legal advisers. First, article 2 defines the terms “the Act”, “the 2015 Act”, “the 1991 Act” and “the Agency”. [*Interruption.*] I apologise; I should have said the “1999 Act” and not “1991 Act”—this is one of those mornings. None of those terms is used further in the order, and they are therefore superfluous.

Secondly, article 2 provides that the regulations specified in the schedule are amended by substituting “Food Standards Scotland” for “Food Standards Agency”. The reference to “Food Standards Agency” should be to “the Food Standards Agency”, in order that the amended regulations read sensibly.

Finally, paragraph 26 of the schedule, read in accordance with article 2, directs an amendment to regulation 13(2)(a)(ii)—[*Interruption.*] I am not having a good morning—how can I read “16” as “13”? Paragraph 26 refers to regulation 16(2)(a)(ii) of the Transmissible Spongiform Encephalopathies (Scotland) Regulations 2010. However, no such regulation exists.

It appears that the reference is a duplication of the later reference to paragraph 16(2)(a)(ii) of schedule 7 to the 2010 regulations. It is, therefore, otiose. Does the committee agree to draw the instrument to the Parliament’s attention on the general reporting ground?

**John Scott:** Convener, you have just illustrated the difficulty of ensuring accuracy in our doing what we do and in drafters doing what they do. Article 2 of the instrument does not appear to be anyone’s finest hour, as it ranges from the superfluous to a complete lack of sense. I encourage everyone to go back and have another go at making sense of article 2.

**The Convener:** Is it agreed that we will draw the instrument to the attention of the Parliament?

**Members indicated agreement.**

### **National Health Service (Clinical Negligence and Other Risks Indemnity Scheme) (Scotland) Amendment Regulations 2015 (SSI 2015/102)**

**The Convener:** No points have been raised by our legal advisers on the regulations. Is the committee content with them?

**Members indicated agreement.**

### **Alien and Locally Absent Species in Aquaculture (Scotland) Regulations 2015 (SSI 2015/103)**

**The Convener:** No points have been raised by our legal advisers on the regulations. Is the committee content with them?

**Members indicated agreement.**

## Instruments not subject to Parliamentary Procedure

11:51

### **Food (Scotland) Act 2015 (Commencement) Order 2015 (SSI 2015/99)**

**The Convener:** Article 2 of the order specifies “1st April” as the date on which the Food (Scotland) Act 2015 will come into force so far as it is not already in force. However, it does not include a year. In specifying an incomplete date, the instrument fails to fully achieve its policy objective. Does the committee agree to draw the instrument to the Parliament’s attention on reporting ground (i), as it is defectively drafted?

**John Scott:** I understand that the Government does not intend to do anything other than issue a correction slip, which I feel is inadequate. I feel that another instrument should be laid, given that the instrument as it stands fails to achieve its policy objective. I make a plea for the correction to be made properly when it is made.

**John Mason:** I think that it is a relatively serious error in that the date could be interpreted in other ways—the year could be 2015, 2016, 2017 or whatever. Errors sometimes could not lead to other meanings, but in this case there could be another meaning, which makes it more serious in my opinion.

**The Convener:** The other thing that I should bring to the committee’s attention is the fact that the instrument brings into force sanctions that, although they are not actually criminal offences, will feel a bit like them. If we are in any way uncertain about whether those sanctions have been introduced, that seems to me, frankly, to be bad law and something that we should encourage the Government to avoid.

The committee makes it clear that it is highly unsatisfactory that the Government has proposed to amend the order by way of a correction slip and calls on the Government to lay a further instrument to correct the error as a matter of law before the intended commencement date of 1 April. Is that agreed?

**Members** *indicated agreement.*

### **Children and Young People (Scotland) Act 2014 (Commencement No 8 and Saving Provision) Order 2015 (SSI 2015/104)**

**The Convener:** No points have been raised by our legal advisers on the order. Is the committee content with them?

**Members** *indicated agreement.*

**The Convener:** That brings us to the end of agenda item 4 and, therefore, the public part of the meeting.

11:53

*Meeting continued in private until 12:06.*

Members who would like a printed copy of the *Official Report* to be forwarded to them should give notice to SPICe.

---

Available in e-format only. Printed Scottish Parliament documentation is published in Edinburgh by APS Group Scotland.

All documents are available on  
the Scottish Parliament website at:

[www.scottish.parliament.uk](http://www.scottish.parliament.uk)

For details of documents available to  
order in hard copy format, please contact:  
APS Scottish Parliament Publications on 0131 629 9941.

For information on the Scottish Parliament contact  
Public Information on:

Telephone: 0131 348 5000  
Textphone: 0800 092 7100  
Email: [sp.info@scottish.parliament.uk](mailto:sp.info@scottish.parliament.uk)

e-format first available  
ISBN 978-1-78568-194-3

Revised e-format available  
ISBN 978-1-78568-210-0