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Delegated Powers and Law Reform Committee Comataidh Cumhachdan Tiomnaichte is Ath-leasachadh Lagh

Subordinate Legislation Considered by the Delegated Powers and Law Reform Committee on 13 May 2025



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Delegated Powers and Law Reform Committee

The remit of the Delegated Powers and Law Reform Committee is to consider and report on the following (and any additional matter added under Rule 6.1.5A)—

(a) any—

(i) subordinate legislation laid before the Parliament or requiring the consent of the Parliament under section 9 of the Public Bodies Act 2011;

(ii) [deleted]

(iii) pension or grants motion as described in Rule 8.11A.1; and, in particular, to determine whether the attention of the Parliament should be drawn to any of the matters mentioned in Rule 10.3.1;

(b) proposed powers to make subordinate legislation in particular Bills or other proposed legislation;

(c) general questions relating to powers to make subordinate legislation;

(d) whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation;

(e) any failure to lay an instrument in accordance with section 28(2), 30(2) or 31 of the 2010 Act;

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

(g) any Scottish Law Commission Bill as defined in Rule 9.17A.1; and

(h) any draft proposal for a Scottish Law Commission Bill as defined in that Rule.

(i) any Consolidation Bill as defined in Rule 9.18.1 referred to it in accordance with Rule 9.18.3.



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Introduction

1. At its meeting on 13 May 2025ⁱ, the Committee considered the following instruments under its remit and agreed to draw them to the attention of the Parliament:
 - Firefighters' Pensions (Remediable Service) (Scotland) Amendment Regulations 2025 (SSI 2025/113);
 - Police Pensions (Remediable Service) (Scotland) Amendment Regulations 2025 (SSI 2025/114); and
 - Teachers' Pensions (Remediable Service) (Scotland) Amendment Regulations 2025 (SSI 2025/121).
2. The Committee's recommendations in relation to these instruments are set out in the next section of this report.
3. The Committee also determined that, in terms of its remit, it did not need to draw the Parliament's attention to the instruments at the end of the report.

ⁱ Stuart McMillan MSP submitted apologies for this meeting.

Scrutiny of instruments under the Committee's remit: instruments drawn to the attention of the Parliament

Firefighters' Pensions (Remediable Service) (Scotland) Amendment Regulations 2025 (SSI 2025/113)

The Police Pensions (Remediable Service) (Scotland) Amendment Regulations 2025 (SSI 2025/114)

The Teachers' Pensions (Remediable Service) (Scotland) Amendment Regulations 2025 (SSI 2025/121)

4. The background to these three instruments is as follows.
5. Each of these instruments (SSIs 2025 113, 114 and 121) amends a set of regulations from 2023. Those regulations made changes to the pension schemes of Scottish firefighters, police and teachers which were necessary following a successful court challenge in 2018 related to the reform of public sector pension schemes. The court found that providing transitional protections for scheme members who were closest to retirement age unlawfully discriminated against younger members.
6. The Committee considered the earlier instruments at its meeting on 19 September 2023, along with two other similar instruments (for national health and for local government pension schemes). In its report, the Committee drew all of them to the attention of the Parliament, having identified drafting points in each. The Committee's report on the original instruments can be found [here](#).
7. In each case the Scottish Government committed to address some or all of the points identified by the Committee.
8. The instruments considered by the Committee at its meeting on 13 May 2025 are intended to make these corrections. Unfortunately, they are not wholly successful in correcting the earlier instruments, as set out below.
9. The Committee asked the Scottish Government questions on each of today's instruments, and the full correspondence is set out in [this paper, published alongside papers for this week's Committee meeting](#).

Firefighters' Pensions (Remediable Service) (Scotland) Amendment Regulations 2025 (SSI 2025/113)

10. This instrument was made to correct errors identified by this Committee in the [Firefighters' Pensions \(Remediable Service\) \(Scotland\) Regulations 2023](#) (SSI 2023/242) ("the Principal Regulations"), and also contains some new provision.
11. In relation to this instrument, the Committee's questions 2, 3, 4, 6 and 7 concern the correction of errors which were identified in the Principal Regulations by this Committee. Questions 1, 5, 8 and 9 relate to new provision made in this instrument.

12. Question 1 concerns the amendment made by regulation 2(2)(b) of this instrument to the definition of “eligible child” in the interpretation provision (regulation 2(1)) of the Principal Regulations. The amendment has the result that the definition reads:

“eligible child” means, in relation to—

- (a) the 1992 scheme, the meaning given in... the 1992 Order;
- (b) the 2007 scheme, the meaning given in... the 2007 Order;
- (c) ~~the 2015 scheme, the meaning given in regulation 85 of the 2015 Regulations~~ the reformed scheme;”

The above image has been inserted as the report publishing software cannot properly replicate the appropriate formatting. For accessibility purposes, the text of the image reads:

” “eligible child” means, in relation to—

(a) the 1992 scheme, the meaning given in... the 1992 Order;

(b) the 2007 scheme, the meaning given in... the 2007 Order;

(c) ~~the 2015 scheme, the meaning given in regulation 85 of the 2015 Regulations~~ the reformed scheme.”

- 13. The Scottish Government agreed this was an error and intends to correct it in an amending instrument.
- 14. The Committee considers that sub-paragraph (c), as amended, is obviously wrong; it is not obvious to the reader what the provision should say; and it appears in a provision of particular significance, namely a definition.

15. The Committee therefore reports on reporting ground (i) that the drafting of regulation 2(2)(b) appears to be defective in that it impedes the operation of a defined term.

16. **Question 2** concerned the correction of the term “immediate choice election”, which was used in the Principal Regulations but was not defined. The question had two parts.

17. Regarding the first part of the question, the Committee asked in 2023 whether it would be clearer to use a defined term, noting that “immediate choice decision” and “section 6 election” are defined. The response in 2023 was that this should refer to “immediate choice decision”. However, the correction in the present instrument is to “section 6 election”. It therefore asked for confirmation that the appropriate term is in fact “section 6 election”, and has received this confirmation. The Committee is content that no reporting grounds are engaged.

18. Regarding the second part of Question 2, the instrument corrects only one of the two references to “immediate choice election” in paragraph 1(1) of the schedule: regulation 2(17)(a) corrects the reference in the definition of “election” but not in the

definition of “eligible decision-maker”. The Scottish Government confirmed that this is an oversight and that it will be corrected in an amending instrument.

19. The Committee reports this point on the general reporting ground.

20. **Question 3** concerned an error in regulation 12(11) of the Principal Regulations which regulation 2(5)(b) of the instrument sought to correct. In short, the original error was that the provision obliged “the beneficiary” to pay an amount to “the beneficiary”. In 2023, the Scottish Government agreed that this should read “to the scheme manager”. The correction, however, obliges “the scheme manager” to pay “the beneficiary”, which is the wrong way round.
21. The Scottish Government has now confirmed that its original answer was correct, and agrees that the drafting does not achieve the intended effect. The Scottish Government has advised that it will correct this error in an amending instrument.
22. The Committee reported the original error for defective drafting given that the error concerns a matter of significance, namely to whom the money is to be paid. The attempted correction has, if anything, made matters worse: while the original provision did not work, the new provision requires the wrong person to make payment.
23. The Committee notes the assurance given in the Scottish Government’s answer that the situation of an overpayment being made to a beneficiary has not arisen.

24. The Committee reports on reporting ground (i) that the drafting of the amendment to regulation 17(11) appears to be defective given the new error concerning to whom the money is to be paid.

25. **Question 4** asked why the instrument corrects “deferred choice election decision” to the defined term “deferred choice decision” in regulations 13(4) and 16(b) of the Principal Regulations (regulation 2(6) and (8) of the instrument), but does not correct the same references that the Committee highlighted in paragraph 1(1) of the schedule, where they appear in the definition of “election” and of “eligible decision maker”. The Scottish Government confirmed that this is an oversight and will correct it in the amending instrument.

26. The Committee reports this point on the general reporting ground.

27. **Question 5** concerned regulation 2(12)(b) of the instrument, amending regulation 49(1) of the Principal Regulations.
28. This provision changes the definition of “ill-health benefits”, including by inserting reference to a “2006 IHR member”. The Committee asked whether this should be “2007 IHR member”. The Scottish Government confirmed that it should, and that it will be corrected in the amending instrument.

29. The Committee reports this point on the general reporting ground.

30. In identifying this error, the Committee noticed another error in the Principal Regulations which it did not pick up in 2023, that in the definition of “alternative scheme”, the reference to “2006 IHR member” should also be “2007 IHR member”. The Committee raised this with the Scottish Government, which confirmed that this point will also be corrected in the amending instrument.

31. The Committee notes that the Scottish Government intends to correct this point.

32. **Question 6** concerns the term “surviving partner” in the Principal Regulations.

33. In the Committee’s original questions in 2023 on the Principal Regulations, the Committee noted that regulation 54(1)(b) refers to the term “surviving partner” but that this term is not defined in the instrument or the parent Acts. The Scottish Government agreed, at that time, that additional clarity would be beneficial, and regulation 2(17)(a)(ii) of the present instrument inserts a new definition.

34. The term appears in the body of the regulations, but the definition has been inserted into paragraph 1 of the schedule, which is an interpretation provision that operates only for the purposes of the schedule. The Committee asked whether this was an error.

35. The Scottish Government advised that it is not of the view that this is a material error, given that regulation 2(4) of the Principal Regulations provides for the definition, but agreed that amending the instrument would provide clarity. The Scottish Government advised that, since amendments will be made anyway in response to the other questions, it will address this error in the amending instrument.

36. The Committee notes that this point will be addressed in the amending instrument.

37. **Question 7** concerns the correction of an error in the preamble of the Principal Regulations (that the reference to paragraph 6(a) of schedule 2 of the 2013 Act should be to paragraph 6(c)). The Scottish Government advised in its response to the Committee in 2023 that it would correct this by correction slip and that the SI Registrar had already confirmed that this would be acceptable. However, this has not been done as the correction slip is not showing on the public record. The Committee asked for an explanation.

38. The Scottish Government apologised for this oversight and advised that it will now deal with the correction slip.

39. In relation to this point, the Committee:

- reports on the general reporting ground, in that the Scottish Government's commitment of 12 September 2023 to correct an error in the preamble of the Principal Regulations by correction slip has not been fulfilled; and
- notes that the Scottish Government has advised that it will now deal with the correction slip as soon as practicable, and before the amending instrument is laid.

40. **Question 8** relates to new provision made by this instrument. The question has three parts, all concerning new regulation 51A(1) of the Principal Regulations, which is inserted by regulation 2(13) of the instrument.
41. First, the Scottish Government has accepted that the reference in new regulation 51A(1)(b)(ii) to Schedule 2 should be to Schedule 1, and will address this in the amending instrument.

42. **The Committee reports this point on the general reporting ground.**

43. Second, the Committee asked if the reference in brackets to “as defined in Part 1 of Schedule [2] of the 2007 Order” was intended to apply to all four of the defined terms which appear in paragraph (1) (“special member”, “full protection member...”, “tapered protection member...” and “transition date”), or if it was intended to apply only to “transition date”. If the former, it asked whether this was sufficiently clear. The Scottish Government has responded that it is intended to apply to the latter. The Committee is content that no reporting grounds are engaged.
44. Third, the Committee noted that the 2007 Order defines the terms “full protection member of this Scheme” and “tapered protection member of this Scheme”, whereas in the instrument the terms used are “full protection member” and “tapered protection member”. It asked if the abbreviations were intentional. The Scottish Government replied that it considers the abbreviations to be sufficiently clear. The Committee considers that when relying on a defined term, best practice is to cite accurately the whole term. However, in the context of this provision it considers that there is no real likelihood of the terms being misunderstood. The Committee is content that no reporting grounds are engaged.
45. **Question 9** also relates to new provision made by this instrument in relation to new regulation 51A.
46. The Committee asked whether the reference in new regulation 51A(7)(b) to “that part” should be to Part 11 (rather than Part 12) of the 2015 Regulations. The Scottish Government has confirmed that the reference is incorrect.
47. The answer to question 9 indicated that this error will be addressed in the amending instrument.

48. **The Committee reports this point on the general reporting ground.**

49. **The Committee notes that the Scottish Government intends to address the points mentioned in paragraphs 15, 19, 24, 26, 29, 31, 36, 42 and 48 above in an amending instrument which will be laid before summer recess.**

50. The lead committee for this instrument is the Criminal Justice Committee.

Police Pensions (Remediable Service) (Scotland) Amendment Regulations 2025 (SSI 2025/114)

51. This instrument also forms part of the package, and general background is set out at paragraphs 4 – 9 above. Again, the full correspondence on this instrument can be found in [this paper, published alongside papers for this week's Committee meeting](#).

52. The instrument was made to correct errors identified by this committee in the [Police Pensions \(Remediable Service\) \(Scotland\) Regulations 2023](#) (SSI 2023/239) (“the Principal Regulations”).

53. In relation to this instrument, the Committee asked several questions that related to the correction of the errors identified in the Principal Regulations by this Committee.

54. **Question 1** asked about the Scottish Government’s failure to meet its commitment to correct an error in the preamble of the Principal Regulations by correction slip.

55. The Scottish Government apologised for this oversight and committed again to bringing forward a correction slip.

56. **The Committee reports, on the general reporting ground, that the Scottish Government’s commitment of 12 September 2023 to correct an error in the preamble of the Principal Regulations by correction slip has not been fulfilled.**

57. **Questions 2 and 3** asked the Scottish Government for clarification as to whether substitutions of definitions were intended to apply in both instances where they occurred in the Principal Regulations in each case.

58. The Scottish Government confirmed that this was the case and advised that they considered this to be sufficiently clear. The Committee considers that, in line with standard drafting practice, the words “wherever it occurs” (or similar) should be used where multiple substitutions are intended.

59. The Committee considers that, in line with standard drafting practice, regulation 3 of the instrument should specify that the substitution is to be made in both instances where “an immediate choice election” appears in regulation 10(c) and paragraph 1(1) of the schedule of the Principal Regulations. Similarly, regulation 5 of the instrument should specify that the substitution is to be made in both instances where “deferred choice election decision” appears in paragraph 1(1) of the schedule of the Principal Regulations.

60. The Committee reports these two points on the general reporting ground.

61. **Question 4** highlighted that there is an error in regulation 7 of the instrument in that it referred to regulation 22(3) and (4) for the purposes of omitting an erroneous reference in the Principal Regulations, where it should have referred to regulation 23(3) and (4).
62. The Scottish Government accepted that this is an error and has committed to correcting the reference by correction slip.

63. The Committee reports this point on the general reporting ground.

64. Question 4 also sought to clarify whether the correction the Scottish Government was making in this provision was correct, given that it was a different solution to that which was offered in response to the Committee's previous questions on the Principal Regulations. The Scottish Government has confirmed that it considers that the solution presented in this instrument is the better way of correcting the original error identified, and the Committee accepts this explanation.
65. **Question 5** referred to question 3 asked by the Committee in respect of the Firefighters instrument above (SSI 2025/113). This question highlighted that a similar issue also arose in respect of the Police Pension Scheme.
66. The issue in the Principal Regulations for the Police Pension Scheme is that provision does not appear to be made for situations where an amount paid to the beneficiary exceeds the aggregate of the lump sum or pension benefits to which the beneficiary is entitled. The Committee asked whether, since the Scottish Government appears to be seeking to correct a similar issue in respect of the Firefighters' Pension Scheme, it intended also to correct the issue in respect of the Police Pension Scheme. The Scottish Government responded that the situation described above, where an amount paid to a beneficiary exceeds the aggregate of the lump sum or pension benefits to which the beneficiary is entitled to, has not yet occurred, and it considers it unlikely to occur. The Scottish Government indicated that it is likely that this will be addressed but that there is not a firm timescale for amendments the Police Pension Scheme at present. It also stated that this is being considered along with corresponding amendments with equivalent schemes in England and Wales.

67. The Committee highlights this correspondence to the lead committee, and notes that the opportunity to correct the omission has not been taken in this instrument, which is in contrast to the approach taken in respect of the Firefighters' Pension Scheme.**68. The Committee notes that the Scottish Government has undertaken to address the points reported in paragraphs 56 and 63 above by correction slip which will be dealt with as soon as practicable, and in any event before**

summer recess.

69. The lead committee for this instrument is the Criminal Justice Committee.

Teachers' Pensions (Remediable Service) (Scotland) Amendment Regulations 2025 (SSI 2025/121)

70. This instrument also forms part of the package, and general background is set out at paragraphs 4 – 9 above. Again, the full correspondence on this instrument can be found in [this paper, published alongside papers for this week's Committee meeting](#).

71. The purpose of the instrument is to correct errors in the [Teachers' Pensions \(Remediable Service\) \(Scotland\) Regulations 2023](#) SSI 2023/141 ("Principal Regulations").

72. The Committee asked several questions that related to the correction of the errors identified in the Principal Regulations.

73. **Questions 1 and 3** concerned clarification as to whether the substitutions of definitions were intended to apply in both instances where they occurred in the Principal Regulations. The Scottish Government confirmed that this was the case and advised that it considered this to be sufficiently clear.

74. The Committee considers that, in line with standard drafting practice, the words "“wherever it occurs” (or similar) should be used where multiple substitutions are intended. Accordingly, regulation 2(2) of the instrument should specify that the substitution is to be made in both instances where “deferred choice election decision” appears in schedule 1 of the Principal Regulations; and regulation 2(7) of the instrument should specify that the substitution is to be made in both instances where “compensatable” appears in regulation 46 of the Principal Regulations.

75. The Committee reports these two points on the general reporting ground.

76. **Question 2** concerned regulation 2(5) of the instrument. This provision amends the definition of “alternative amount” in the Principal Regulations, but there was an absence of information in the Policy Note on the policy intent and impact of regulation 2(5).

77. The Scottish Government has advised the Committee that the amendment is to clarify the provision to bring it in line with the position in England and Wales. The response further notes that the amendment has no material effect on the policy intention and that there may be similar amendments made to the relevant Police scheme and Fire scheme regulations in the future, following consultation. The Committee is content with the additional information provided by the Scottish Government.

78. **Question 4** noted that this instrument fails to correct the references to “immediate choice election” in paragraph 1(1) of the schedule of the Principal Regulations, which the Scottish Government had committed to do on 12 September 2023, and

asked if this was an oversight. The Scottish Government confirmed in its response that this was an error and that it will be corrected in a stand alone amending instrument.

79. **The Committee reports this point on the general reporting ground.**

80. **The Committee notes that the Scottish Government intends to address this in an amending instrument.**

81. The lead committee for this instrument is the Education, Children and Young People Committee.

No points raised

82. At its meeting on 13 May 2025, the Committee considered the following instruments under its remit and agreed not to draw them to the attention of the Parliament.

Education, Children and Young People Committee

The Regional Strategic Bodies and Regional Colleges (Glasgow and Lanarkshire) Order 2025 (SSI 2025/Draft)

The Education (Fees and Student Support) (Miscellaneous Amendment and Revocation) (Scotland) Regulations 2025 (SSI 2025/136)

Health, Social Care and Sport Committee

The Human Tissue (Supply of Information about Transplants) (Scotland) Regulations 2025 (SSI 2025/139)

Social Justice and Social Security Committee

The Social Security (Miscellaneous Amendment) (Scotland) Regulations 2025 (SSI 2025/Draft)

