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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 3 June 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 3 June 2025, the Committee considered the following instruments under its remit and agreed to draw them to the attention of the Parliament:
 - Education (Appeal Committee Procedures) (Scotland) Amendment Regulations 2025 (SSI 2025/144); and
 - Firefighters' Pension Scheme (Amendment) (Scotland) Regulations 2025 (SSI 2025/149); and
 - Teachers' Pension Scheme (Scotland) (Amendment) Regulations 2025 (SSI 2025/152)
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.

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

Education (Appeal Committee Procedures) (Scotland) Amendment Regulations 2025 (SSI 2025/144)

4. This instrument makes amendments to the Education (Appeal Committee Procedures) (Scotland) Regulations 1982 (“1982 Regulations”) which govern school admission and exclusion appeal hearings in Scotland.
5. In summary, the instrument
 - Introduces new definitions for “hearing” and “remote facilities”.
 - Provides for hearings to be held in person, wholly remotely, or in a hybrid format.
 - Requires all parties to agree if a hearing is to be held wholly remotely.
 - Requires all appeal committee members to attend in person if an appellant wishes to attend a hybrid meeting in person.
6. In [correspondence with the Scottish Government](#), the Committee asked a question about the enabling powers for this instrument.
7. In its [response](#), the Scottish Government agreed that section 28H(5) of the 1980 Act should have been cited as an enabling power. However, the Scottish Government considers that the powers sought to be used are clear from the context, and that the omission does not affect the instrument.
8. The lead committee for this instrument is the Education, Children and Young People Committee.

9. **The Committee draws the instrument to the attention of the Parliament on the general reporting ground for a failure to follow proper drafting practice, in that section 28H(5) of the Education (Scotland) Act 1980 (“1980 Act”) has not been cited as an enabling power in the preamble.**

Firefighters’ Pension Scheme (Amendment) (Scotland) Regulations 2025 (SSI 2025/149)

10. The instrument changes the employee contribution rates. It does this by amending [the Firefighters’ Pension Scheme \(Scotland\) Regulations 2015](#) (SSI 2015/19). The old contribution rate has been in place since 1 April 2018.
11. In [correspondence with the Scottish Government](#), the Committee asked about the title of the instrument, which is:

“The Firefighters’ Pension Scheme (Amendment) (Scotland) Regulations 2025”

The Committee asked whether the title should be instead:

“The Firefighters’ Pension Scheme (Scotland) Amendment Regulations 2025”

12. The Scottish Government agreed that this would be the more appropriate title, and regretted the departure from drafting convention, but considered that the meaning, understanding or effect of this instrument is not affected by the form of the title in this case. The Scottish Government did not propose taking any corrective action.
13. The lead committee for this instrument is the Criminal Justice Committee.

14. The Committee reports, on the general reporting ground, that the instrument’s title is not in line with drafting convention.

Teachers’ Pension Scheme (Scotland) (Amendment) Regulations 2025 (SSI 2025/152)

15. This instrument amends the eligibility criteria for membership of the Scottish Teachers’ Pension Scheme from 1 August 2025. This is done by amending the [Teachers’ Pension Scheme \(Scotland\) \(No. 2\) Regulations 2014](#) (SSI 2014/292) which contains the scheme.
16. In [correspondence with the Scottish Government](#), the Committee asked about the insertion of a definition of “immediately before” into schedule 1 of the principal regulations, and three new provisions into schedule 1 which use this term.
17. The specific issue is that this definition is being applied to the whole of schedule 1, so it applies not just to the term where it appears in the new provisions but also to the term where it appears in 13 other, pre-existing provisions of schedule 1. The Committee asked whether this was intentional, and, if so, whether the Scottish Government considered that these other 13 provisions still operate as intended.
18. The Scottish Government advised that the intention had been for the new definition to apply only to the new provisions. However, the Scottish Government considers that, in the context of the other 13 provisions, the new definition is inoperative, and therefore is of no effect.
19. The Scottish Government intends to clarify this in the next amending instrument.

20. The Committee reports, on the general reporting ground, that the definition of “immediately before”, inserted into schedule 1 of SSI 2014/292 by regulation 3 of the instrument, was intended to apply only in relation to that term where it appears in new paragraphs 15B, 15C and 15D, but has been applied to all instances of that term in schedule 1.

21. The Committee notes that the Scottish Government has undertaken to

clarify this in the next amending instrument.

22. New paragraph 16(1)(d) of schedule 1 of the principal regulations, inserted by regulation 4(c) of the instrument, provides that employment as a teacher of a kind not specified elsewhere in the schedule is eligible employment for the purposes of the scheme if:
- “(d) the teacher is employed by any other body constituted under an Act relating to education and which the Scottish Ministers agree to treat as an employing authority for the purposes of this part of the scheme.”*
23. First, the Committee asked whether “Act” in this provision is intended to take the definition in the Interpretation Act 1978, schedule 1 (as opposed to the definition in the Interpretation and Legislative Reform (Scotland) Act 2010), and is therefore intended to mean bodies constituted under an Act of Parliament but not also bodies constituted under an Act of the Scottish Parliament.
24. The Scottish Government confirmed that this is the case and that this is in line with the policy intention.
25. The Committee considered that, having received confirmation of the policy intention, it can be content that no reporting grounds are engaged on this point.
26. Second, the Committee asked what “this part” of the scheme (in the provision quoted above) is intended to mean, and whether its meaning is sufficiently clear.
27. The Scottish Government responded that 16(1)(d) is intended to have effect in relation to the scheme established by the principal regulations, as a whole, and that any unintentional ambiguity is regretted.
28. The Scottish Government intends to clarify this in the next amending instrument.
29. The lead committee for this instrument is the Education, Children and Young People Committee.

30. The Committee reports, on the general reporting ground, that the reference to “this part” of the scheme in new paragraph 16(1)(d) of SSI 2014/292 (inserted by regulation 4(c) of the instrument), should be a reference to the scheme as a whole.

31. The Committee notes that the Scottish Government has undertaken to clarify this in the next amending instrument.

No points raised

32. At its meeting on 3 June 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

Children (Scotland) Act 2020 (Commencement No. 3 and Saving Provision) Regulations 2025 (SSI 2025/157)

Local Government, Housing and Planning Committee

Valuation (Proposals Procedure) (Scotland) Regulations 2025 (SSI 2025/146)

- The Committee welcomed that this instrument fulfils a commitment by the Scottish Government to correct a drafting error in the [Valuation \(Proposals Procedure\) \(Scotland\) Amendment Regulations 2024 \(SSI 2024/186\)](#)
- The Committee noted that [the Scottish Government intends to correct a minor cross-referencing error identified by the Committee](#) in this instrument as soon as possible, though a correction slip.

