

Delegated Powers and Law Reform Committee  
Tuesday, 3<sup>rd</sup> June 2025  
19<sup>th</sup> Meeting, 2025 (Session 6)

## Instrument Responses

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

**On 22 May 2025, the Committee asked the Scottish Government:**

The instrument cites section 28D(3) of the Education (Scotland) Act 1980 and section 22 and paragraph 6(6) of schedule 2 of the Education (Additional Support for Learning) (Scotland) Act 2004 as its enabling powers.

1. Given that the provision made by this instrument applies also to exclusion hearings, does it also rely on section 28H(5) of the Education (Scotland) Act 1980, and if so, should this have been cited in the preamble as an additional enabling power?
2. Please confirm whether any corrective action is proposed, and if so, what action and when.

**On 27 May 2025, the Scottish Government responded as follows:**

The Education (Appeal Committee Procedures) (Scotland) Amendment Regulations 2025 ("the Regulations") amend the Education (Appeal Committee Procedures) (Scotland) Regulations 1982 ("the 1982 Regulations") to make provision relating to remote hearings of both (1) placing request appeals under the Education (Scotland) Act 1980 ("the 1980 Act") and the Education (Additional Support for Learning) (Scotland) Act 2004, and (2) exclusion appeals under the 1980 Act.

We agree that section 28H(5) of the 1980 Act should have been cited as an enabling power in addition to those specifically cited in the preamble to the Regulations. This was inadvertently omitted. We consider nonetheless the powers sought to be used are clear from the context, as they would necessarily have been relied upon - the Regulations make textual amendments to the 1982 Regulations, whose preamble cites both sections 28D(3) and 28H(5) of the 1980 Act. We would rely on the reference in the preamble to "all other powers enabling [the Scottish Ministers] to do so" on this occasion. In accordance with the court's conclusion on this issue in *Vibixa Ltd v Komori UK Ltd* [2006] EWCA Civ 536 (para 12(1)(i)), which we consider persuasive in Scotland, this power would necessarily have to have been invoked in order for the Regulations to have effect. Though it does not affect the instrument, the intended effect is reflected in the Policy Note ("Purpose of the instrument: This instrument proposes amendments to the regulations governing school admission and exclusion appeal hearings in Scotland.").

Accordingly, no corrective action is proposed.

We thank the Committee for the opportunity to put this matter on the record.

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

**On 22 May 2025, the Committee asked the Scottish Government:**

In regulation 18(c), is there an error in the cross-reference to regulation 6(2)(c) (as there is no sub-paragraph (c) in regulation 6(2))?

**On 27 May 2025, the Scottish Government responded as follows:**

The Scottish Government accepts there is an error. The reference in regulation 18(c) should be to regulation 6(2)(b). The Scottish Government considers this is obvious in the context. Regulation 18(c) deals with the disapplication of certain provisions in certain situations in which the assessor makes a decision not to alter an entry in a valuation roll on the basis of a proposal. Regulation 6(2)(b) is the only provision of regulation 6(2) which provides an assessor with a basis to make a decision not to alter an entry in a valuation roll. For this reason, we intend to deal with this by correction slip and will make arrangements for the correction to be made as soon as possible.

## **Firefighters' Pension Scheme (Amendment) (Scotland) Regulations 2025 (SSI 2025/149)**

**On 21 May 2025, the Committee asked the Scottish Government:**

1. Would the standard form for the title of the Firefighters' Pension Scheme (Amendment) (Scotland) Regulations 2025 be "The Firefighters' Pension Scheme (Scotland) Amendment Regulations 2025" in line with the convention for instruments that amend one principal instrument which itself has "(Scotland)" in its title?
2. Please confirm whether any corrective action is proposed, and if so, what action and when.

**On 27 May 2025, the Scottish Government responded as follows:**

1. It is agreed that SSI 2025/149 might have been more appropriately titled as suggested, in line with current drafting convention.
2. Whilst the departure from drafting convention is regretted, it is considered that the meaning, understanding or effect of this instrument is not effected by the form of the title in this case, and on that basis, no corrective action is proposed.

## **Teachers' Pension Scheme (Scotland) (Amendment) Regulations 2025 (SSI 2025/152)**

**On 22 May 2025, the Committee asked the Scottish Government:**

1. Regulation 3 of the Teachers' Pension Scheme (Scotland) (Amendment) Regulations 2025 inserts a definition of "immediately before" into schedule 1 of the principal regulations (SSI 2014/292). This definition then operates for the whole of schedule 1. It therefore applies not just where the term appears in the new provisions inserted into schedule 1 by this instrument (in new paragraphs 15B, 15C and 15D) but also to the term where it appears in the other provisions listed below. Is this intentional, and do you consider that these other provisions still operate as intended?

In part 1 of schedule 1:

- paragraph 2(1)(a)
- paragraphs 2A(6)(a), (b) and (c).

In part 2 of schedule 1:

- paragraph 4(2)(b)
- each of paragraphs 8 to 15.

2. New paragraph 16(1)(d) of schedule 1, 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:

"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."

- (1) Does "Act" take the definition in the Interpretation Act 1978, schedule 1, and therefore mean bodies constituted under an Act of Parliament but not bodies constituted under an Act of the Scottish Parliament? If so, is this in line with the policy intention?
  - (2) What does "this part" of the scheme indicate, and is its meaning sufficiently clear?
3. Please advise whether any corrective action is proposed, and if so, what action and when.

**On 27 May 2025, the Scottish Government responded as follows:**

1. The intention is that the definition inserted by regulation 3 will have effect only in relation to new paragraphs 15B, 15C and 15D. It is considered that in the context of those other provisions referred to, the new definition is inoperative, and therefore is of no effect. Further, as this instrument has prospective effect only, it is considered that any amendment to the meaning of the expression "immediately

before” in relation to the various past dates specified in paragraph 4(2)(b) and each of paragraphs 8 to 15 could not have effect in relation to the specified dates.

2. (1) The expression “Act” takes the definition in the Interpretation Act 1978. The policy intention is to allow Scottish Ministers further discretion to admit members or classes of members to the scheme, in addition to the existing discretion conferred by paragraph 16(1)(c). The amendment made by regulation 4(c) is consistent with this intention.

(2) New paragraph 16(1)(d) is intended to have effect in relation to the scheme established by the principal regulations, as a whole. Any unintentional ambiguity is regretted.

3. Provision will be included in the next amending instrument to clarify the points discussed in paragraphs 1 and 2(2) above.