

Instrument Responses

Animal Health (Fixed Penalty Notices) (Scotland) Regulations 2026 (SSI 2026/Re-laid Draft)

NB: the instrument to which these questions relate was laid on 11 December 2025 and withdrawn on 7 January 2026, following these questions sent by the Committee. The instrument considered by the Committee at this meeting was re-laid on 8 January 2026.

On 19 December 2025 the Committee asked the Scottish Government:

1. In the definition of “relevant offence” in regulation 2, should the reference to “authorised person” be instead to the defined term “authorised officer”?
2. Please confirm whether any corrective action is proposed, and if so, what action and when.

On 6 January 2026 the Scottish Government responded:

1. We are grateful to the Committee for drawing our attention to the typographical error in the definition of “relevant offence” in regulation 2 of the instrument. We confirm that the reference to “authorised person” should instead be to the defined term “authorised officer”.
2. Corrective action is proposed to address this error, and we will be seeking to withdraw the instrument and lay a corrected version in due course.

Civic Government (Scotland) Act 1982 (Licensing of Non-surgical Procedures) Order 2026 (SSI 2026/Re-laid Draft)

NB: the instrument to which these questions relate was laid on 10 December 2025 and withdrawn on 8 January 2026, following these questions sent by the Committee. The instrument considered by the Committee at this meeting was re-laid on 9 January 2026.

On 16 December 2025 the Committee asked the Scottish Government:

In Schedule 2 (Application of Part 1 of the 1982 Act):

1. Paragraph 3(b) inserts new paragraphs (d), (e) and (f) into section 5(1) (rights of entry and inspection). Paragraphs (a) to (d) list things which authorised persons or constables may do. New subsections (e) and (f) concern what happens to things seized under paragraph (d). Should paragraphs (e) and (f) be inserted as new subsections (1A) and (1B)?
2. Paragraph 5(b) inserts new subsections (3A) to (3D) into section 7 of the 1982 Act. Could you confirm whether the policy intention behind subsection (3D) is to describe a burden-shifting mechanism (i.e. that the defence is to be treated as established unless disproved beyond reasonable doubt), and if so, whether alternative wording might more clearly reflect that intention?
3. Paragraph 7(6)(c) inserts new sub-paragraph (7A) into paragraph 5 of schedule 1 to the 1982 Act. New sub-paragraph (7A) refers to the situation “where a licensing authority grants a licence under sub-paragraph (7) for a licence....” However, licences are granted under paragraph 5(1), not 5(7) (which concerns the delivery of a licence which has been granted). Should the reference to sub-paragraph (7) therefore be a reference to sub-paragraph (1)?

On 6 January 2026 the Scottish Government responded:

Thank you for pointing out the drafting errors at points (i) and (iii), above. The Scottish Government does not consider that these errors would affect the operation of the instrument.

Nonetheless, the Scottish Government considers that it would be beneficial to correct these drafting errors as quickly as possible. It is our intention to withdraw and re-lay the instrument to address these points.

In respect of point (ii), the policy intention here is to make it clear that the accused is subject to no more than an evidential burden of proof to bring forward enough evidence to raise an issue with respect to the defence. As such, the legal burden of disproving the defence and proving that the offence has been committed stays with the prosecution. Similar drafting can be found in sections 2(5) and 3(3) of the [Non-surgical Procedures and Functions of Medical Reviewers \(Scotland\) Bill](#). This is the Bill currently before Parliament which introduces regulation for higher risk non-surgical procedures. Similar drafting can be found elsewhere including in section 6(2) of the [Domestic Abuse \(Scotland\) Act 2018](#). Therefore, when the instrument is re-laid the Scottish Government does not intend to adjust the drafting.

Firefighters' Pension Scheme (Scotland) Amendment Order 2025 (SSI 2025/406)

On 8 January 2026 the Committee asked the Scottish Government:

New rule 4(4) in Part 5 of the Scheme (inserted by paragraph 3(c) of the schedule of the instrument) provides that, in the formula for calculating a survivor's missed pension lump sum grant:

"B is the number of years (which has the meaning in rule 6(2) of Part 10) from 1 July 2000 to the end date of the deceased's extended limited period (the "relevant period")."

1. Should this be "B is the number of completed years...", given the terminology in rule 6(2), and in line with the equivalent references in the other calculations in the same part: in Part 5 rules 1B(8) and 1C(6)?
2. Is something missing as regards which years are to count in determining the value of B, for example is B intended to be the number of [completed] years during which the deceased was employed in the period from 1 July 2000 to the end date of their extended limited period (rather than all the years from 1 July 2000 to the end of the person's extended limited period, which could include years when they were not employed)? Again this contrasts with the equivalent provision in rules 1B(8) and 1C(6).
3. Please confirm whether any corrective action is proposed, and if so, what action and when.

On 14 January 2026 the Scottish Government responded:

1. In response to questions 1 and 3 above, the Scottish Government's position is that the cross-reference can only be understood as meaning that the term "year" in the definition of element "B" in that formula takes the same definition for the purposes of that element of the formula as the definition given to the term "completed year" in rule 6(2) of Part 10. The effect of this cross-reference is to import the definition of the term "completed year" in rule 6(2) of Part 10 into the definition of element "B" in the formula in rule 4(4) being inserted into Part 5.

Whilst the Scottish Government's position is that the legal effect of this cross-reference is clear, in the interests of consistency with the existing formulae in Part 5 (awards on death) of the Scheme¹ (being the formulae at rules 1B(8) and 1C(6) of Part 5), the Scottish Government intend to amend the definition of element "B" in the formula in rule 4(4) of Part 5 of the Scheme in the next suitable instrument amending the Firefighters' Pension Scheme (Scotland) Order 2007, to insert the word "completed".

2. In response to questions 2 and 3 above, the Scottish Government's position is that, given the immediately surrounding context given in paragraphs (5) to (9) of rule 4 of Part 5 (awards on death) of the Scheme, element "B" in the formula at rule 4(4) is understood in context to represent the number of (completed) years of the deceased's service during the "relevant period"², as determined by the Scottish Fire and Rescue Service, as "the authority" for the Scheme. The Scottish Government does not consider that the operation of the provision will be impacted in practical terms, as the position is understood by the Scheme authority and other key stakeholders. However, the Scottish Government intend, in the next suitable instrument, to

¹ The Scheme is comprised in schedule 1 of the Firefighters' Pension Scheme (Scotland) Order 2007 (SSI 2007/199)

² The term "relevant period" is defined in the definition of element "B" in the formula at rule 4(4) of Part 5 of the Scheme

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clarify that element “B” represents the number of completed years of the deceased’s service during the “relevant period”, as determined by “the authority” for the Scheme.