

Delegated Powers and Law Reform Committee

6th Meeting, 2024 (Session 6), Tuesday, 20 February 2024

Instrument Responses

Firefighters' Pension Schemes (Scotland) Amendment Order 2024 (SSI 2024/26)

On Friday 2 February 2024, the Committee asked the Scottish Government

Article 4 of the instrument introduces a new Rule 1C in Part 5 schedule 1 to the Firefighters' Pension Scheme (Scotland) Order 2007, making provision about an additional death grant. The rule will apply when three conditions are met, and those conditions are set out at Rule 1C(1)(a)-(c). The condition at (c) states that the person is to have died "before 31 March 2025 and without making an election under rule 6A of Part 11 in respect of their service during the extended limited period following an application under rule 5B of Part 11 (purchase of service during the extended limited period).

1. Rule 1C(2) states that "where a deceased was married, or a member of a civil partnership, at the time of death, their spouse or civil partner may apply in writing to the authority for a death grant and any such application must be made on or before 31 March 2025". Is it the result that those firefighters who die close to, or on the date of 31 March 2025 will not be entitled to the additional death grant, unless their spouse or civil partner is able to make an application before 31 March 2025? If so, is that the policy intention?
2. Rule 1C(3) states that "where the deceased was not married, or a member of a civil partnership, at the time of the deceased's death, a child of the deceased may apply in writing to the authority for a death grant and any such application must be made on or before 30 September 2024". Is it the result that the children of those firefighters who die between 30 September 2024 and 31 March 2025 are not eligible to make such an application? If so, is that the policy intention?

Please confirm whether any corrective action is proposed, and if so, what action and when.

On Wednesday 7 February 2024, the Scottish Government responded:

1. There could potentially be cases where spouses or civil partners of deceased firefighters who die on or close to 31 March 2025 may have insufficient time to apply for a death grant within the specified period. It is envisaged that there are likely to be very few, if any, cases where these circumstances apply. While there is a requirement to specify a cut-off date for death grant applications, the policy intention is that spouses or civil partners in these circumstances would be entitled

to a death grant, and in the event of any such cases arising, appropriate action will be considered.

2. The date referred to in Rule 1C(3) should be 31 March 2025. This error is regretted. The policy intention is that children of deceased members in these circumstances should be entitled to apply for a death grant on a similar basis to spouses or civil partners. It is envisaged that there may be few, if any, cases where these circumstances apply, but corrective provision will be made in the next amending instrument, if necessary with retrospective effect under section 34(3) of the Fire and Rescue Services Act 2004.
3. Corrective action in the next amending instrument is proposed in relation to Rule 1C(3), as detailed above.

Dangerous Dogs (Designated Types) (Scotland) Order 2024 (SSI 2024/31)

On Friday 2 February 2024, the Committee asked the Scottish Government

1. The instrument creates criminal offences which depend on whether a particular dog is identified as an XL Bully type of dog. The burden of proof in demonstrating that a particular dog is not an XL Bully type falls on the accused, who would have to produce sufficient evidence to the court that the dog is not that type (by virtue of s. 5(5) of the parent Act). It therefore appears particularly important to be able to identify what type of dog is an XL Bully for the purposes of this instrument. Is this sufficiently clear from the instrument? Should the instrument contain either a definition of what type of dog is an XL Bully or reference to another source by which this is to be determined?
2. We note that the UK Government has published a [conformation standard](#) for XL Bullies. It also appears to have published [Guidance for enforcers on applying this conformation standard](#) on 31 October 2023, at the same time as it laid the equivalent England & Wales instrument (SI 2023/1164). The Explanatory Memorandum for that instrument directs the reader to the guidance. Does the Scottish Government intend to publish its own guidance or conformation standard, and, if so, should the instrument refer to it? Alternatively, does the Scottish Government intend that XL Bullies in Scotland will be identified by reference to the UK Government's conformation standard and guidance, and, if so, should the instrument refer to it?
3. The Policy Note for the instrument states that exemption and compensation arrangements will be put in place by a future Order. Was consideration given to laying that Order at the same time as the present Order, which would have enabled the Parliament to consider the related measures at the same time?

Please confirm whether any corrective action is proposed, and if so, what action and when.

On Friday 9 February, the Scottish Government responded:

1. It is made clear in the policy note accompanying this instrument (see for example the second paragraph on page 2) that the intention is to replicate the effect of the provisions which are contained in the corresponding UK Government legislation for England and Wales. It would not accord with this intention to insert in this instrument a definition of a XL Bully which is not present in that other legislation, and this could create the false impression that a different approach was intended. We consider that it is sufficiently clear what constitutes the type of dog which is caught by the designation, drawing on the assistance of the conformation standard and accompanying guidance produced by the UK Government (which is not referred to in the UK Government legislation either), though this is not the only possible source of advice and an owner can consult a veterinary surgeon or other expert if they choose. The [Scottish Government news release](#) issued on the day this S.S.I. was laid referenced the UK Government guidance and conformation standard, and stated that they should also be used in Scotland for the identification of XL Bullies. Similar information is available on the Scottish Government website. We note that the approach taken in this Order is similar to that taken in respect of other types of dog which fall within section 1 of the Dangerous Dogs Act 1991- the Pit Bull and Japanese Tosa (see section 1(1)(a) and (b)) and the Dogo Argentino and Fila Brasileiro (see S.I. 1991/1743 article 2). The relevant legislation does not include any definition of these breeds.
2. The Scottish Government does not intend to publish its own guidance or conformation standard, as it is our intention to use the UK Government approach (and this is explained through Scottish Government web pages and news releases). We do not consider that it would be helpful to produce our own guidance when the intention is to mirror the provision made for England and Wales. While it is intended that the UK Government conformation standard and guidance will be used, it is equally considered unhelpful to reference this in the instrument when it is not incorporated into the corresponding UK Government legislation. To do so might suggest a difference in the status to be given to the guidance on either side of the border. While the guidance and conformation standard will assist in identification, they do not have the direct force of law in England and Wales and should not in Scotland either. Expert evidence can be used in cases where a doubt is raised as to the identification of a dog in the context of the offence contained in section 1(7) of the 1991 Act.
3. Consideration was given, but the detail of what an owner will need to do to seek an exemption or compensation is distinct from the policy aim of this initial Order, which is to apply the safeguards contained in section 1(2) of the Dangerous Dogs Act 1991 as soon as possible. Achieving this was the key priority at the time of laying. The appointed day under section 1(3) of the 1991 Act has been set at 6 months from the date of laying of the current S.S.I. The Scottish Government intends to lay a further S.S.I. in the coming weeks which will provide the detail of the exemption process for Parliament to consider.

The Scottish Government does not propose to take any corrective action.