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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 8 May 2018**



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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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# Committee Membership



**Convener**  
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**Deputy Convener**  
**Stuart McMillan**  
Scottish National Party



**Tom Arthur**  
Scottish National Party



**Neil Findlay**  
Scottish Labour



**Alison Harris**  
Scottish Conservative  
and Unionist Party

# Introduction

1. At its meeting on 8 May 2018, the Committee agreed to draw to the attention of the Parliament the following instrument—

National Health Service Pension Scheme (Scotland) (Additional Voluntary Contributions) Regulations 2018 (SSI 2018/124).

2. The Committee's recommendations and conclusions in relation to this instrument are set out in the following section of this report.
3. The Committee determined that it did not need to draw the Parliament's attention to the instruments set out by the relevant lead committee at the end of this report.

# Points raised: Instruments subject to negative procedure

## National Health Service Pension Scheme (Scotland) (Additional Voluntary Contributions) Regulations 2018 (SSI 2018/124) (Health and Sport)

### Purpose

4. These Regulations are a consolidation of the National Health Service Superannuation Scheme (Scotland) (Additional Voluntary Contributions) Regulations 1998 and the amendments made to that instrument.
5. The Regulations are subject to the negative procedure and come into force on 1 June 2018.

### Consideration

6. There are four drafting errors in the Regulations. Two are cross-referencing errors. The first is that in regulation 2(1) (interpretation), in the definition of "normal benefit age", reference is made to a person's election "under regulation 3". It should refer instead to "regulation 4".
7. The second cross-referencing error is that regulation 15(1) (payments by the Scottish Ministers) applies where an authorised provider or a selected authorised provider "fails to pay a benefit referred to in regulation 11(1)". This cross-reference should instead be to failure to pay a benefit referred to in regulation 12(1).
8. There are two other errors in the Regulations. Regulation 4(8) (making and acceptance of elections) refers to the "NHS Pension Scheme Scotland", rather than the "NHS Pension Scheme", a term defined in regulation 2(1).
9. Regulation 9(1) (inward transfers) applies to a person who enters pensionable employment and who has paid contributions "to another additional voluntary contribution which is a registered pension scheme". It should refer "to another additional voluntary contribution *scheme* which is a registered pension scheme".
10. The Scottish Government has indicated in correspondence on these matters that it intends to correct these matters at the next legislative opportunity in the late summer of this year. The correspondence is set out in the Annex to this report.

### Recommendations

11. **The Committee draws the Regulations to the attention of the Parliament on the general reporting ground in respect of four drafting errors as set out in paragraphs 6 to 9 above.**

12. **The Committee notes that the Scottish Government intends to correct these errors in the next set of amending regulations, scheduled for late Summer.**
13. **The Committee welcomes the consolidation of the Regulations.**



# No points raised

## **Environment, Climate Change and Land Reform**

Community Right to Buy (Abandoned, Neglected or Detrimental Land) (Eligible Land, Regulators and Restrictions on Transfers and Dealing) (Scotland) Regulations 2018 [draft]

Community Right to Buy (Abandoned, Neglected or Detrimental Land) (Compensation) (Scotland) Order 2018 (SSI 2018/137)

Community Right to Buy (Abandoned, Neglected or Detrimental Land) (Applications, Ballots and Miscellaneous Provisions) (Scotland) Regulations 2018 (SSI 2018/140)

Land Reform (Scotland) Act 2016 (Commencement No. 8 and Saving Provision) Regulations 2018 (SSI 2018/138 (C.11))

Community Empowerment (Scotland) Act 2015 (Commencement No. 11) Order 2018 (SSI 2018/139 (C.12))

## **Health and Sport Committee**

Community Care (Personal Care and Nursing Care) (Scotland) Amendment (No. 2) Regulations 2018 [draft]

## **Rural Economy and Connectivity**

Plant Health (Export Certification) (Scotland) Order 2018 (SS1 2018/132)

# Annex

## National Health Service Pension Scheme (Scotland) (Additional Voluntary Contributions) Regulations 2018 (SSI 2018/124)

### On 25 April 2018, the Scottish Government was asked:

1. In regulation 2(1)(interpretation), in the definition of "normal benefit age", reference is made to a person's election "under regulation 3". Should this reference instead be to a person's election "under regulation 4"?
2. Regulation 4(8) (making and acceptance of elections) refers to the "NHS Pension Scheme Scotland", rather than the "NHS Pension Scheme", a term defined in regulation 2(1). Is the intention to refer here to the (defined) "NHS Pension Scheme"?
3. Regulation 9(1) (inward transfers) applies to a person who enters pensionable employment and who has paid contributions "to another additional voluntary contribution which is a registered pension scheme". Would the meaning be clearer with the alternative wording "to another additional voluntary contribution *scheme* which is a registered pension scheme"?
4. Regulation 15(1) (payments by the Scottish Ministers) applies where an authorised provider or a selected authorised provider "fails to pay a benefit referred to in regulation 11(1)...". Should this cross-reference instead be to failure to pay a benefit referred to in regulation 12(1)?
5. Is corrective action proposed?

### The Scottish Government responded as follows:

*In reply to question 1*, the reference should be to regulation 4.

*In reply to question 2* the reference should be to NHS Pension Scheme.

*In reply to question 3*, it is agreed that including the word 'scheme' would improve the drafting.

*In reply to question 4*, the reference should be to regulation 12(1).

*In reply to question 5*, it is proposed to amend the regulations as proposed by the Committee at the next set of amending regulations which is scheduled for late summer.

