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Delegated Powers and Law Reform Committee Comataidh Cumhachdan Tiomnaichte is Ath-leasachadh Lagh

Subordinate Legislation Considered by the Committee on 26 November 2019



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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.



<http://www.parliament.scot/parliamentarybusiness/CurrentCommittees/delegated-powers-committee.aspx>



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Scottish Conservative
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Mary Fee
Scottish Labour

Introduction

Instruments drawn to the attention of the lead committee

1. At its meeting on 25 November 2019, the Committee considered the following instruments subject to the negative procedure and agreed to draw them to the attention of the lead Committee:
 - Police Pensions Amendment (Increased Pension Entitlement) (Scotland) Regulations 2019 (SSI 2019/380)
 - Firefighters' Pension Scheme Amendment (Increased Pension Entitlement) (Scotland) Order 2019 (SSI 2019/381)
 - Firefighters' Pension and Compensation Schemes (Amendment) (Scotland) Order 2019 (SSI 2019/382)
2. The Committee also considered the following instrument subject to no parliamentary procedure and agreed to draw it to the attention of the lead Committee:
 - Planning (Scotland) Act 2019 (Commencement No. 2, Saving and Transitional Provisions) Regulations 2019 (SSI 2019/377 (C.19))
3. The Committee's recommendations and conclusions in relation to these instruments are set out later in the report.

Other instruments considered

4. 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.

Instruments Drawn to the Attention of the Lead Committee

Police Pensions Amendment (Increased Pension Entitlement) (Scotland) Regulations 2019 (SSI 2019/380)

Purpose

5. This instrument amends the Police Pensions Regulations 1987 to make provision to ensure continuity of an affected member's police pension at its current rate where incorrect Guaranteed Minimum Pension data has applied to the annual indexation of that pension. The incorrect element of the award is converted to an award of Increased Pension Entitlement.

Committee Consideration

6. Regulation 3(b) inserts a definition of "reconciliation exercise" into regulation N1 (interpretation) of the 1987 Regulations. Reference is made in that definition to "HMRC" and "SPPA" without defining what these acronyms mean.
7. The Scottish Government accepts that this is an oversight but does not propose any corrective action on the basis that, considered in the context of the 1987 Regulations, it will be well understood to the reader that "HMRC" is a reference to "Her Majesty's Revenue and Customs" and "SPPA" is a reference to "Scottish Public Pensions Agency".
8. However, this is not in line with the Scottish Government's SSI drafting guidance which states that acronyms "nearly always need the support of a definition". The terms "HMRC" and "SPPA" are also undefined in the 1987 Regulations that are being amended and the parent statutes.

9. The Committee therefore reports this instrument to the Justice Committee under reporting ground (h) as the meaning of the terms "HMRC" and "SPPA" could be clearer.
10. The Committee calls on the Scottish Government to amend the 1987 Regulations to clarify this matter at the next available opportunity.

Firefighters' Pension Scheme Amendment (Increased Pension Entitlement) (Scotland) Order 2019 (SSI 2019/381)

Purpose

11. This instrument amends the Fireman's Pension Scheme Order 1992 to make provision to ensure continuity of an affected firefighter's pension at its current rate where incorrect Guaranteed Minimum Pension data has applied to the annual indexation of that pension. The incorrect element of the award is converted to an award of Increased Pension Entitlement.

Committee Consideration

12. Similarly to the above instrument, paragraph 1(b) of the schedule inserts a definition of "reconciliation exercise" into rule P1 (interpretation) in schedule 2 of the Firemen's Pension Scheme Order 1992. Reference is made in that definition to "HMRC" and "SPPA" without defining what these acronyms mean.
13. For the reasons given above, the Scottish Government acknowledges the error but proposes no corrective action.
14. As noted in relation to the above instrument, the Scottish Government's SSI drafting guidance states that acronyms "nearly always need the support of a definition". The terms "HMRC" and "SPPA" are also undefined in the 1992 Order that is being amended and the parent statutes.
15. The Committee reports this instrument to the Justice Committee under reporting ground (h) as the meaning of the terms "HMRC" and "SPPA" could be clearer.
16. The Committee calls on the Scottish Government to amend the 1992 Order to clarify this matter at the next available opportunity.

Firefighters' Pension and Compensation Schemes (Amendment) (Scotland) Order 2019 (SSI 2019/382)

Purpose

17. The instrument amends the Firemen's Pension Scheme Order 1992 and the Firefighter's Compensation Scheme (Scotland) Order 2006. The purposes of these amendments are as follows:
 1. They remove the current restriction in relation to firefighters' pensions on using only service from April 1988 for benefits paid to survivors of civil partnerships and same sex marriages. This aligns the position with the benefits payable to survivors of opposite-sex marriages in line with a Supreme Court decision in 2017.
 2. They ensure that a firefighter is not disadvantaged by provision which allows for two pensions to be calculated and awarded separately where a scheme member received a higher level of salary earlier in their career and then changed role, resulting in a salary reduction.
 3. They enable the Scottish Fire and Rescue Service to pay a lump sum in excess of two and a quarter times the full amount of the pension.

Committee Consideration

18. There is an error relating to the consistency of the retrospective provision made in article 1(3). Article 1(3)(b) provides that article 2 has effect from 5 December 2005 insofar as necessary to give effect to articles 5, 6 and 8, which are also given retrospective effect from that date.
19. For consistency, article 2 should have retrospective effect from 1 April 2007 insofar as necessary to give effect to article 3, which has effect from that date. Article 2 should also have retrospective effect from 16 December 2014 insofar as necessary

to give effect to article 7, which has effect from that date. Furthermore, article 9 should have retrospective effect from 5 December 2005 insofar as necessary to give effect to articles 10 to 12, which have effect from that date.

20. The Committee reports this instrument to the Justice Committee under the general reporting ground and calls on the Scottish Government to lay an amending instrument to rectify these errors.

Planning (Scotland) Act 2019 (Commencement No. 2, Saving and Transitional Provisions) Regulations 2019 (SSI 2019/377 (C.19))

Purpose

21. The instrument commences sections 25 (conditional grant of planning permission: noise-sensitive developments) and 42 (fines: increases and duty of court in determining amount) of the Planning (Scotland) Act 2019 on 20 December 2019. It commences section 23 (notice by planning authority of certain applications made to them) of the 2019 Act on 1 March 2020.
22. It also makes savings and transitional arrangements to ensure that the new law only applies to applications or notices made after the relevant provisions of the Bill come into force.

Committee Consideration

23. Regulation 9 saves the provisions of section 145 of the Town and Country Planning Scotland Act 1997 as they have effect before 20 December 2019 in respect of a "planning contravention notice" served before that date. However, these provisions should instead have been saved in respect of a "breach of condition notice" served before that date.
24. The provision does not therefore have the intended effect of saving the law in respect of breach of condition notices served before 20 December.
25. The Scottish Government acknowledges this error and has indicated that it intends to bring forward an amending instrument in time for the Regulations coming into force on 20 December 2019.

26. The Committee reports this instrument to the Local Government and Communities Committee under reporting ground (i) as the drafting of regulation 9 appears to be defective.
27. The Committee welcomes the Scottish Government's intention to bring an amending instrument before these Regulations come into force.

No Points Raised

Environment, Climate Change and Land Reform Committee

Environment (EU Exit) (Scotland) (Amendment etc.) (No. 2) Regulations 2019 (SSI 2019/draft)

Social Security Committee

Scottish Tribunals (Eligibility for Appointment) Amendment Regulations 2019 (SSI 2019/384)

Local Government and Communities Committee

Charities Accounts (Scotland) Amendment Regulations 2019 (SSI 2019/393)

Planning (Scotland) Act 2019 (Commencement No. 3) Regulations 2019 (SSI 2019/385 (C.20))

Justice Committee

Vulnerable Witnesses (Criminal Evidence) (Scotland) Act 2019 (Commencement No. 1 and Transitional Provisions) Regulations 2019 (SSI 2019/392 C.21))

