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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 21 May 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.



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Introduction

1. At its meeting on 21 May 2019, the Committee agreed to draw the following instrument to the attention of the Parliament-

Local Government Pension Scheme (Miscellaneous Amendments) (Scotland) Regulations 2019 (SSI 2019/161).

2. The Committee's recommendations and conclusions in relation to this instrument are set out in the following section of this report.

Points raised: instrument subject to negative procedure

Local Government Pension Scheme (Miscellaneous Amendments) (Scotland) Regulations 2019 (SSI 2019/161) (Local Government and Communities)

Purpose

3. The main purpose of these Regulations is to provide that the entitlement to retire after reaching the age of 55 also applies to deferred pension members of the 2018 local government pension scheme, and to change the requirements for co-habiting partner pensions in the scheme.
4. The Regulations also correct some inaccurate references to ensure that the provisions in the Local Government Pension Scheme (Transitional Provisions and Savings) (Scotland) Regulations 2014 continue to have effect in the pension scheme. The Regulations “take into account the day to day experience of applying the 2018 Regulations ... where areas for clarification have been sought, or a change in approach has been requested.” The explanatory note to the SSI has further detail of the technical changes.
5. The Regulations are subject to the negative procedure, and come into force on 28 June 2019. Some provisions have effect from 1 June 2018, and others from 1 April 2015. The retrospective effect of provisions is permitted by provisions in the Superannuation Act 1972 and the Public Services Pensions Act 2013.

Committee consideration

6. The instrument contains two errors. Firstly, regulation 2(12)(b) substitutes “or” for “and” in the penultimate line of regulation 22(7) of the Local Government Pension Scheme (Scotland) Regulations 2018 (SSI 2018/141). There is an error as “and” appears in the third line of the paragraph, rather than the penultimate line. Secondly, there is an error in regulation 2(27) and (28) as both paragraphs substitute paragraph (2) of schedule 4 of the Local Government Pension Scheme (Scotland) Regulations 2018 (SSI 2018/141), but in slightly different terms.
7. These issues were raised with the Scottish Government and this correspondence is reproduced in Annex A. The Government has undertaken to correct the errors.

Recommendations

8. **The Committee draws the instrument to the attention of the Parliament under the general reporting ground as it contains two drafting errors as set out in paragraph 6 above.**

9. **The Committee welcomes the Government's undertaking to lay a further instrument to correct the errors timeously for these Regulations to come into force on 28 June 2019.**

Annex A

CORRESPONDENCE WITH THE SCOTTISH GOVERNMENT

Local Government Pension Scheme (Miscellaneous Amendments) (Scotland) Regulations 2019 (SSI 2019/161)

1. Regulation 2(12)(b) substitutes “or” for “and” in the penultimate line of regulation 22(7) of the Local Government Pension Scheme (Scotland) Regulations 2018 (SSI 2018/141). Regulation 22(7) makes provision where an active member of the local government pension scheme with concurrent employments ceases an employment with entitlement to a deferred pension.

(a) Is this an error as “and” does not appear in the penultimate line, it appears in the third line of regulation 22(7)?

(b) If so, what is the effect of the provision?

2. (a) Is it agreed that there is an error in regulation 2(27) and (28) as both paragraphs substitute paragraph (2) of schedule 4 of SSI 2018/141, but in slightly different terms?

(b) Please clarify whether it is intended to substitute paragraph (2) of schedule 4, given that regulation 2(27) and (28) make provision for written direction by the Scottish Ministers to substitute a different administering authority, but the existing paragraph (2) of schedule 4 prescribes the circumstances which apply when Ministers may on application of the Scheme employer by direction substitute another fund?

3. Regulation 4 amends the Local Government Pension Scheme (Scotland) Regulations 2014 (SSI 2014/164), with effect from 1 April 2015 by inserting regulation 37(8), for the purposes of regulations 37 to 40 of those Regulations, in relation to the calculation of assumed pensionable pay. However it appears that SSI 2014/164 was wholly revoked by paragraph 1(a) of schedule 6 of SSI 2018/141, with effect from 1 June 2018.

(c) Please explain why it is considered that regulation 4 can properly, with effect from 1 April 2015, amend provision in the now wholly revoked 2014 Regulations -or should the provision have re-enacted the relevant provisions of those Regulations with the insertion, with effect from 1 April 2015?

(d) Is reliance being placed on provision in the Interpretation and Legislative Reform (Scotland) Act 2010? 4. Is any corrective action proposed?

4. Is any corrective action proposed?

On 15 May, the Scottish Government responded as follows:

In reply to question 1, it is agreed that “and” appears in the third line of regulation 22(7). It is proposed to change the reference from “penultimate” to “third” by an instrument amending the regulations to come into force at the same time as the regulations, namely 28 June 2019.

In reply to question 2, it is agreed that there has been an accidental duplication of substitution. It is intended to allow directions to allow substitution of administering authority. It is proposed to remove the duplication by revoking regulation 2(27) by an

instrument amending the regulations to come into force at the same time as the regulations, namely 28 June 2019.

In reply to question 3, it is considered that the changes made by regulation 4 to the 2014 Regulation can properly be made as the 2014 Regulations were still in force on the date on which it takes effect (1 April 2015). It is agreed that SSI 2014/164 being amended is already revoked but there is a transitional provision in SSI 2018/141, regulation 102(2). So that reliance may be placed on the corresponding provision of SSI 2018/141 as amended by SSI 2019/161, it was necessary that SSI 2014/164 had the corresponding provision. Hence the amendment of the revoked instrument.

In reply to question 4, see answers to questions 1 and 2.

