

Delegated Powers and Law Reform Committee  
Tuesday, 13<sup>th</sup> May 2025  
16<sup>th</sup> Meeting, 2025 (Session 6)

## Instrument Responses

### Firefighters' Pensions (Remediable Service) (Scotland) Amendment Regulations 2025 (SSI 2025/113)

On Thursday 1<sup>st</sup> May 2025, the Committee asked the Scottish Government:

"The instrument is intended to correct errors in the Firefighters' Pensions (Remediable Service) (Scotland) Act 2023 "(the Principal Regulations)", including errors that were identified by the Committee ([Report on Subordinate Legislation Considered by the DPLR Committee on 19 September 2023](#)). The instrument also makes limited new provision.

1. Regulation 2(2)(b) amends the definition of "eligible child" in regulation 2(1) (interpretation) of the Principal Regulations. It provides that:

"For "the 2015 scheme, the meaning given in regulation 85 of the 2015 Regulations" substitute "the reformed scheme"."

The result is that the definition reads:

"eligible child" means, in relation to—

- (a) the 1992 scheme, the meaning given in... the 1992 Order;
- (b) the 2007 scheme, the meaning given in... the 2007 Order;
- (c) ~~the 2015 scheme, the meaning given in regulation 85 of the 2015 Regulations~~ the reformed scheme;

Is this an error?

2. Regarding the correction of the term "immediate choice election":

- (1) Regulation 2(4) amends regulation 10(c) of the Principal Regulations to change the references to "immediate choice election" to "section 6 election". In the original answer to the DPLRC's question on this point on the Principal Regulations, the Scottish Government advised that this should refer to "immediate choice decision". We assume that, on further consideration, it has been concluded that the correct term is in fact "section 6 election", but would be grateful if you could confirm.
- (2) The instrument corrects only one of the references to "immediate choice election" in paragraph 1(1) of the schedule: regulation 2(17)(a) corrects the reference in the definition of "election" but not in the definition of "eligible decision-maker". Is this an oversight?

3. Regulation 2(5)(b) seeks to correct the error in regulation 12(11) of the Principal Regulations by an amendment with the following effect (emphasis added):

“(11) Where, at the operative time—

- (a) the aggregate of the lump sum or pension benefits that have been paid... to a beneficiary, exceeds
- (b) the aggregate of the lump sum or pension benefits to which... the beneficiary is entitled...,

the **beneficiary scheme manager** must pay an amount equal to the difference **to the beneficiary**.”

The following paragraph provides (emphasis added):

“(12) Where, at the operative time—

- (a) the amount mentioned in paragraph (11)(a), is less than
- (b) the amount mentioned in paragraph (11)(b),

the **scheme manager** must pay an amount equal to the difference to the **beneficiary**.”

When the Committee first highlighted the defect in paragraph (11) (that the provision required the beneficiary to pay the beneficiary), the Committee asked whether payment should instead be to the scheme. The Scottish Government responded that this should indeed read “to the scheme manager”, not “to the beneficiary”. This response seemed logical in that, where the benefits that have been paid to a beneficiary exceed the amount to which the beneficiary is entitled, the **beneficiary** must pay the difference **to the scheme manager**. This would also work alongside paragraph (12) which provides that where the benefits paid are less than the amount to which the beneficiary is entitled, the **scheme manager** must pay the difference **to the beneficiary**. Could confirmation please be provided of the policy intention for paragraph (11) and of whether the Scottish Government considers that the amendment achieves it.

4. The instrument (in regulation 2(8)) corrects “deferred choice election decision” to “deferred choice decision” in regulations 13(4) and 16(b), but does not correct the same references that the Committee highlighted in paragraph 1(1) of the schedule, where they appear in the definition of “election” and of “eligible decision maker”. Is this an oversight?
5. Regulation 2(12)(b) amends regulation 49(1) of the Principal Regulations.
- (1) It changes the definition of “ill-health benefits”, including by inserting reference to a “2006 IHR member”. Should this be “2007 IHR member”?

- (2) Similarly, should the reference to “2006 IHR member” in the definition of “alternative scheme” be “2007 IHR member”?

6. In the Committee’s original questions on the Principal Regulations, the Committee noted that regulation 54(1)(b) refers to “surviving partner” but that this not a defined term. The Scottish Government agreed, in response, that additional clarity would be beneficial, and regulation 2(17)(a)(ii) inserts a new definition.

The term appears in the body of the regulations, but the definition has been inserted into paragraph 1 of the schedule, which is an interpretation provision that operates only for the purposes of the schedule. Is this an error?

7. The Committee asked, in relation to the Principal Regulations, whether the reference in the preamble to paragraph 6(a) of schedule 2 of the 2013 Act should be to paragraph 6(c). The Scottish Government confirmed that this was the case. In its updated answer to the Committee of 19 September 2023 the Scottish Government advised that this would be addressed by correction slip and that the SI Registrar had already confirmed that this was acceptable. No correction slip is showing on the public record. Could an explanation please be provided.

The following questions relate to regulation 2(13) of the instrument, inserting new section 51A, which is new provision in relation to entitlement to ill-health benefits where a remedy member’s legacy scheme is the 2007 scheme.

8. In new regulation 51A(1):

- (1) should the reference in regulation 51A(b)(ii) to Schedule 2 be to Schedule 1?
- (2) is the reference in brackets to “as defined in Part 1 of Schedule [2] of the 2007 Order” intended to apply to all four of the defined terms which appear in paragraph (1) (“special member”, “full protection member...”, “tapered protection member...” and “transition date”) , or is it intended to apply only to “transition date”? If the former, is this sufficiently clear?
- (3) the 2007 Order defines the terms “full protection member of this Scheme” and “tapered protection member of this Scheme”, whereas in the instrument the terms used are “full protection member” and “tapered protection member”. Are the abbreviations intentional?

9. In new regulation 51A(7)(b), should the reference to “that part” be to Part 11 (rather than Part 12) of the 2015 Regulations? Part 11 concerns appeals and determinations (including provision on opinions of the IQMP), whereas Part 12 contains supplementary provision and makes no reference to opinions of the IQMP.

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

**On Wednesday 7<sup>th</sup> May 2025, the Scottish Government responded:**

“The Government is grateful to the Committee for bringing the errors and omission in this instrument to our attention. The errors identified are addressed in response to your questions below alongside the proposed corrective action. We consider that there is no material impact on the operation of the scheme as a result of these errors but as acknowledged an amending instrument will be brought forward to address these. We are working with colleagues to lay this instrument before the summer recess. The Government apologises to the Committee for the errors in this instrument.

1. We are grateful to you for bringing this to our attention. We agree this is an error for which we apologise.

We correct this error in the amending instrument mentioned above.

2. (1) The correct term is “section 6 election”, to achieve the desired policy effect and on this basis no amendment is required.
2. (2) We are grateful to you for bringing this to our attention. This is an oversight which we will address in the amending instrument mentioned above.
3. We are grateful to you for bringing this to our attention. The drafting does not achieve the intended effect. We note that the situation of an overpayment being made to a beneficiary has not arisen. Accordingly section 23 of the Public Service Pensions Act 2013 (which deals with retrospective effect where there is an adverse effect) is not engaged.

To give effect to the policy intention we will correct this error in the amending instrument mentioned above.

4. We are grateful to you for bringing this to our attention. This is an oversight which we will correct this error in the amending instrument mentioned above.
5. We agree this is an error and we will correct this error in the amending instrument mentioned above.

We will delete 2(12)(b) and substitute the following;

“(b) in paragraph (1),

(i) in the definition of “ill-health benefits” for “payable by virtue of an entitlement mentioned in paragraph (1)” substitute “to which a 1992 IHR member, a

2007 IHR member or a 2015 IHR member is entitled”, and

(ii) in the definition of “alternative benefits” for “2006 IHR member” substitute “2007 IHR member”.

6. We are not of the view that this is a material error, given that regulation 2(4) of the 2023 Regulations provides for the definition, however, we agree that

amending the instrument would provide clarity. Given that we require to make amendments as noted in answer to the other questions we will address this error in the amending instrument mentioned above.

7. This will be dealt with by correction slip, and we apologise for the oversight.
8. Regarding 8(1) we agree that the reference should be to schedule 1, but consider the other references in questions 8(2) and 8(3) are sufficiently clear. The reference in brackets to “as defined in Part 1 of Schedule [2] of the 2007 Order” is intended to apply only to “transition date”. The abbreviations in the terms referred to in 8(3) are considered sufficiently clear. We will address the error identified in question 8(1) in the amending instrument mentioned above.
9. We agree the reference is incorrect and will address the error identified in question 8(1) in the amending instrument mentioned above.
10. Corrective action is proposed by way of correction slip and amending instrument, as outlined above. The corrections slip shall be dealt with as soon as practicable, and before the instrument is laid.“

## **Police Pensions (Remediable Service) (Scotland) Amendment Regulations 2025 (SSI 2025/114)**

**On Thursday 1<sup>st</sup> May 2025, the Committee asked the Scottish Government:**

“The Policy Note states that the purpose of the instrument is to correct minor errors in the Police Pensions (Remediable Service) (Scotland) Regulations 2023 (SSI 2023/239). Many of those errors were identified by the Committee during scrutiny of that instrument.

1. The Committee reported the instrument on the general ground in respect of an error in the preamble. The preamble cited paragraph 7(a) of schedule 2 to the 2013 Act, whereas it should have cited paragraph 7(b). The Committee noted in its [report](#) that the Scottish Government proposed to correct the error in the preamble by correction slip. We note that the correct power is cited in the current instrument but that a correction slip does not appear to be showing on the public record in respect of the error in the preamble to SSI 2023/239. Could an explanation please be provided.
2. In relation to the correction of the term “an immediate choice election” in the principal regulations, the instrument corrects the reference in regulation 10(c) and paragraph 1(1) of the schedule. Is this correction intended to apply to both instances where the term “an immediate choice election” appears in regulation 10(c) and paragraph 1(1) of the schedule? If so, is that sufficiently clear?
3. In relation to the correction of the term “deferred choice election decision” in the principal regulations, the instrument corrects the reference in regulations 13(4), 16(b) and paragraph 1(1) of the schedule. Is this correction intended to

apply to both instances where the term “deferred choice election decision” appears in paragraph 1(1) of the schedule? If so, is that sufficiently clear?

4. Regulation 18 of this instrument amends regulation 18(2) of the principal regulations. It provides that the reference to “regulation 22(3) and (4)” is to be omitted. The principal regulations currently refer to regulation 23(3) and (4). The current regulations provide that this reference should be replaced with a reference to “regulations 25(3) and 22(4)”. In the Scottish Government’s response to the Committee’s question on this point on the principal regulations, it said that the correct reference should be to regulation 22(3). Is the replacement provided for by this instrument incorrect?
5. My colleague has sent questions in respect of SSI 2025/113. Question 3 asks for confirmation as to the policy intention for regulation 12(11) of The Firefighters’ Pensions (Remediable Service) (Scotland) Regulations 2023, amended by regulation 2(5)(b) of SSI 2025/113, and whether the Scottish Government considers that the amendment achieves it. We note that a similar issue arises in respect of regulation 12(11) and (12) of the Police Pensions (Remediable Service) (Scotland) Regulations 2023, in that provision does not appear to make where the amount paid to beneficiary *exceeds* the aggregate of the lump sum or pension benefits to which the beneficiary is entitled to. If the Scottish Government considers that there is an error, would it intend to make an equivalent amendment in respect of the Police Pensions (Remediable Service) (Scotland) Regulations 2023?
6. Please confirm whether any corrective action is proposed, and if so, what action and when.”

**On Wednesday 7<sup>th</sup> May 2025, the Scottish Government responded:**

“We have set out explanations below and do not consider that any amendments are required to the instrument for the reasons given.

The Scottish Government responds as follows:

1. This will be dealt with by correction slip, and we apologise for the oversight.
2. This correction is intended to apply to both instances where the term “an immediate choice election” appears in regulation 10(c) and paragraph 1(1) of the schedule. We consider this is sufficiently clear.
3. The correction is intended to apply to both instances where the term “deferred choice election decision” appears in paragraph 1(1) of the schedule. We consider this is sufficiently clear.
4. On reflection this is the better way of correcting the original error identified by the Committee in 2023, as “alternative reduction amount” and “alternative reduction amounts” are defined in regulations 25(3) and 22(4).
5. While the opportunity was taken to address this situation in the Firefighters’ Pensions (Remediable Service) (Scotland) Regulations 2023, and this

position is likely to be followed in other schemes, the situation has not yet occurred, and it is considered unlikely to occur. Accordingly there is no firm timescale for possible amendments to this scheme at present but this is being considered along with corresponding amendments with equivalent schemes in England and Wales.

6. The correction slip will be dealt with as soon as practicable, and in any event before the summer recess”

**On Wednesday 7<sup>th</sup> May 2025, the Committee asked the Scottish Government:**

“Question 4 pointed out that the amending instrument refers to “regulation 22(3) and (4)” whereas the principal regulations currently refer to “regulation 23(3) and (4)”. Does the Scottish Government consider that the amending instrument achieves its policy intention of omitting the reference to “regulation 23(3) and (4), or is corrective action proposed?”

**On Thursday 8<sup>th</sup> May 2025, the Scottish Government responded:**

“The Scottish Government consider that the amending instrument achieves its policy intention of omitting the reference to “regulation 23(3) and (4), and referring to the correct provisions in the Principal Regulations, namely 25(3) where remediable relevant benefits are to be reduced in relation to a pension debit calculated under regulation 24(3) though this definition is in another Section (dealing with where information is provided on or after 1 October 2023), and 22(4) where the relevant pension sharing arrangement relates to mixed service. With regard to the reference to “22(3) and (4)” we consider this can be dealt with by way of correction slip, as the error is minor and small in scale, the error and the correct text are obvious to a lay reader, and the correction has no substantive impact on the operation of law, the terms only being defined in the regulations referred to.”

## **Teachers’ Pensions (Remediable Service) (Scotland) Amendment Regulations 2025 (SSI 2025/121)**

**On Thursday 1<sup>st</sup> May 2025, the Committee asked the Scottish Government:**

“The Policy Note states that this instrument is intended to correct minor errors in the Teachers’ Pensions (Remediable Service) (Scotland) Regulations 2023 (“the Principal Regulations”). Many of those errors were identified by the Committee during its scrutiny of the Principal Regulations ([Report on Subordinate Legislation Considered by the DPLR Committee on 19 September 2023](#)). The instrument also makes limited new provision.

1. In relation to the correction of the term “deferred choice election decision” in the Principal Regulations, regulation 2(2) of the instrument corrects the reference in the definition of “deferred choice decision-maker” in regulation 2 and in paragraph 1 of the schedule. Is this correction intended to apply to both instances where the term “deferred choice election decision” appears in paragraph 1(1) of the schedule? If so, in the absence of the usual words “wherever it occurs” (or similar), is that sufficiently clear?

2. Regulation 2(5) of the instrument amends the meaning of “alternative amount” in regulation 19 of the Principal Regulations.
  - (a) What is the policy intention behind this provision (the Explanatory Note and Policy Note do not mention this provision in particular) and does the Scottish Government consider that the amendment achieves it?
  - (b) Will this amendment have any likely effect on those subject to the Principal Regulations, particularly given that regulation 20 provides that the scheme manager must determine the alternative amount in relation to the pension credit as soon as reasonably practicable after 30<sup>th</sup> September 2023 and provide a statement by the end of 30<sup>th</sup> September 2024, and this instrument has retrospective effect from 1<sup>st</sup> October 2023?
  - (c) If this amendment will have an effect on any persons, do you consider that the consultation requirement in section 21(1) of the Public Service Pensions Act 2013 has been fulfilled in relation to this amendment? The Policy Note states that no additional consultation has been undertaken since the consultation for the Principal Regulations in 2023.
3. In relation to the correction of the term “compensatable amount” in the Principal Regulations, regulation 2(7) of the instrument corrects the reference in regulation 46(7). Is this correction intended to apply to both instances where the term “compensatable amount” appears in regulation 46(7)? If so, in the absence of the usual words “wherever it occurs” (or similar), is that sufficiently clear?
4. The instrument does not correct the references to “immediate choice election” in paragraph 1(1) of the schedule of the Principal Regulations. The Scottish Government advised, in the original answer to the DPLRC’s question, that this would be corrected in the next amending instrument. Is this an oversight?
5. Please confirm whether any corrective action is proposed, and if so, what action and when.”

**On Wednesday 7<sup>th</sup> May 2025, the Scottish Government responded:**

“The Government is grateful to the Committee for bringing the error in this instrument to our attention. The error is addressed in response to your questions below alongside the proposed corrective action. We consider that there is no material impact on the operation of the scheme as a result of this error but as acknowledged an amending instrument will be brought forward to address it. We are working with colleagues to lay this instrument before the summer recess, subject to Hm Treasury consent. The Government apologises to the Committee for the error in this instrument.

1. This is intended to apply in both instances and is considered to be sufficiently clear.
2. The amendment to Regulation 19 of the 2023 Regulations amends the definition of “alternative amount” specifically to clarify that where a relevant pension sharing order that does not relate to mixed service specifies a



percentage value in relation to the initial scheme, the alternative amount can only ever be the amount that would have been determined had the remediable relevant benefits been secured in the alternative scheme and the same percentage value been applied under Section 29(2) of The Welfare and Reform Pensions Act 1999 on the valuation day.

This clarification brings the Regulations in line with the related Teachers Pensions (Remediable Service) Regulations 2023 which have effect in England and Wales. The amendment has no material effect on the policy intention on which Scottish Ministers consulted.

This amendment will be considered for further amendment of the relevant Police scheme and Fire scheme Regulations in consultation with The Home Office who are the responsible authority for the Police scheme in England and Wales and The Ministry of Housing, Communities and Local Government who are responsible for the Firefighters pension scheme in England.

3. The correction is intended to apply to both instances, and we consider this to be sufficiently clear.
4. We agree that this omission is an error, and this will be corrected in a stand alone amending instrument.
5. We propose the corrective instrument referred to above.”