

Criminal Justice Committee
Wednesday 28 May 2025
17th Meeting, 2025 (Session 6)

Note by the Clerk on the Firefighters' Pensions (Remediable Service) (Scotland) Amendment Regulations 2025 (SSI 2025/113)

Overview

1. At this meeting, the Committee will consider the following Scottish Statutory Instrument (SSI), which is subject to the negative procedure. The Committee is invited to consider the instrument and decide what, if any, recommendations to make.
2. More information about the instrument is summarised below:

Title of instrument: [The Firefighters' Pensions \(Remediable Service\) \(Scotland\) Amendment Regulations 2025](#) (SSI 2025/113)

Laid under: [The Public Service Pensions Act](#) and the [Public Service Pensions and Judicial Offices Act 2022](#)

Laid on: 24 April 2025

Procedure: Negative

Deadline for committee consideration: 2 June 2025 (Advisory deadline for any committee report to be published)

Deadline for Chamber consideration: 2 June 2025 (Statutory 40-day deadline for any decision whether to annul the instrument)

Commencement: 23 June 2025

Procedure

3. Under the negative procedure, an instrument is laid after it is made, and is subject to annulment by resolution of the Parliament for a period of 40 days beginning on the day it is laid.
4. Once laid, the instrument is referred to:
 - the Delegated Powers and Law Reform (DPLR) Committee, for scrutiny on various technical grounds, and
 - a lead committee, whose remit includes the subject-matter of the instrument, for scrutiny on policy grounds.
5. Any MSP may propose, by motion, that the lead committee recommend annulment of the instrument. If such a motion is lodged, it must be debated at a

meeting of the Committee, and the Committee must then report to the Parliament (by the advisory deadline referred to above).

6. If there is no motion recommending annulment, the lead committee is not required to report on the instrument.

Delegated Powers and Law Reform Committee consideration

7. The DPLR Committee considered the instrument on 13 May 2025 and reported on it in its [33rd Report, 2025](#).
8. The report highlights various issues with the instrument and the **DPLR Committee agreed to draw it to the attention of the Parliament on a number of points under reporting ground (i) defective drafting and the general reporting ground.**
9. The report also notes that the Scottish Government intends to lay an amending instrument before the summer recess to address many of the issues raised.
10. The full correspondence between the DPLR Committee and the Scottish Government is [set out in this paper](#).
11. The relevant sections of the DPLR Committee's report are attached at **Annexe B**.

Purpose of the instrument

12. The purpose of this instrument is to update and amend [The Firefighters' Pensions \(Remediable Service\) \(Scotland\) Regulations 2023](#).
13. The aim is to provide clarity by correcting minor errors and clarify 'Entitlement to ill-health benefits where a remedy member's legacy scheme is the 'New Firefighters' Pension Scheme (Scotland)'

Committee consideration

14. So far, no motion recommending annulment has been lodged.
15. Members are invited to consider the instrument and decide whether there are any points they wish to raise.
16. If members have no points to raise, the Committee should note the instrument (that is, agree that it has no recommendations to make).
17. However, should a motion recommending annulment be lodged later in the 40-day period, it may be necessary for the Committee to consider the instrument again.
18. In any case, Members may wish to take note of the comments from the DPLR Committee that several of the points they raised about the drafting of the SSI do not appear to have been taken on board by the Scottish Government (see

CJ/S6/25/17/3

Annexe B). The Committee may wish to write to the Scottish Government asking why this is the case.

Clerks to the Committee
May 2025

Annexe A: Scottish Government Policy Note

The Firefighters' Pensions (Remediable Service) (Scotland) Amendment Regulations 2025

(SSI 2025/113)

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 1(1) and (2)(f), 2(1) (together with paragraph 6(c) of schedule 2) and 3(1) and (2)(a) (together with paragraph 13 of schedule 3) and (c) and (3) of the Public Service Pensions Act 2013 ("the 2013 Act") and sections 5(1) and (5), 6(1), 7(3), 8(1) and (3), 10(1), 11(1) and (5), 12(1) and (3), 18(1) to (3), (5), (6) and (8), 19(1), (4) and (5), 22(1), (2) and (6), 24(1) and 29(1), (7) and (8) of the Public Service Pensions and Judicial Offices Act 2022 ("PSPJOA 2022") and all other powers enabling them to do so.

To the extent required by section 27 of PSPJOA 2022, these Regulations are made in accordance with Treasury Directions made under that section.

Summary Box

Purpose of the instrument is to correct minor errors and add clarity in The Firefighters' Pensions (Remediable Service) (Scotland) Regulations 2023 (SSI 2023/242).

Policy Objectives

The purpose of this instrument is to update and amend The Firefighters' Pensions (Remediable Service) (Scotland) Regulations 2023.

The aim of this instrument is to provide clarity by correcting minor errors and clarify 'Entitlement to ill-health benefits where a remedy member's legacy scheme is the 'New Firefighters' Pension Scheme (Scotland)'.

UN Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 Compatibility

In accordance with section 23(2) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 (the Act), the Scottish Ministers certify that, in their view, the Firefighters' Pensions (Remediable Service) (Scotland) Amendment Regulations 2025 is compatible with the UNCRC requirements as defined by section 1(2) of the Act.

EU Alignment Consideration

This instrument is not relevant to the Scottish Government's policy to maintain alignment with the EU.

Consultation

No additional consultation has been undertaken as a full consultation was undertaken in 2023 and there is no material change to the regulations. Rather, this Instrument corrects minor errors in the original Scottish Statutory Instrument. The original consultation documents are available to view on the SPPA website¹.

Impact Assessments

An Equality Impact Assessment (EQIA) has not been completed as this is an amendment instrument centred on correction of references, definitions and typographic errors. The EQIA to the original regulations, is available to view on the SPPA website².

Financial Effects

The Minister for Public Finance confirms that no Business and Regulatory Impact Assessment (BRIA) is necessary as changes to employee contributions has no significant financial effects on the Scottish Government, local government or on business.

Scottish Public Pensions Agency
An Agency of the Scottish Government
22 April 2025

¹ <https://pensions.gov.scot/firefighters/scheme-governance-and-legislation/consultations>

² [https://pensions.gov.scot/sites/default/files/2023-05/2015 Remedy Equality Impact Assessment %E2%80%93 Firefighters%27 Pension Scheme.pdf](https://pensions.gov.scot/sites/default/files/2023-05/2015%20Remedy%20Equality%20Impact%20Assessment%20-%20Firefighters%27%20Pension%20Scheme.pdf)

Annexe B: Excerpt from Delegated Powers and Reform Committee, 33rd Report, 2025 (Session 6)

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

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

The Teachers' Pensions (Remediable Service) (Scotland) Amendment Regulations 2025 (SSI 2025/121)

4. The background to these three instruments is as follows. Each of these instruments (SSIs 2025 113, 114 and 121) amends a set of regulations from 2023. Those regulations made changes to the pension schemes of Scottish firefighters, police and teachers which were necessary following a successful court challenge in 2018 related to the reform of public sector pension schemes. The court found that providing transitional protections for scheme members who were closest to retirement age unlawfully discriminated against younger members.
5. The Committee considered the earlier instruments at its meeting on 19 September 2023, along with two other similar instruments (for national health and for local government pension schemes). In its report, the Committee drew all of them to the attention of the Parliament, having identified drafting points in each. The Committee's report on the original instruments can be found [here](#).
6. In each case the Scottish Government committed to address some or all of the points identified by the Committee.
7. The instruments considered by the Committee at its meeting on 13 May 2025 are intended to make these corrections. Unfortunately, they are not wholly successful in correcting the earlier instruments, as set out below.
8. The Committee asked the Scottish Government questions on each of today's instruments, and the full correspondence is [set out in this paper, published alongside papers for this week's Committee meeting](#).

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

10. This instrument was made to correct errors identified by this Committee in the Firefighters' Pensions (Remediable Service) (Scotland) Regulations 2023 (SSI 2023/242) ("the Principal Regulations"), and also contains some new provision.
11. In relation to this instrument, the Committee's questions 2, 3, 4, 6 and 7 concern the correction of errors which were identified in the Principal Regulations by this Committee. Questions 1, 5, 8 and 9 relate to new provision made in this instrument.

12. Question 1 concerns the amendment made by regulation 2(2)(b) of this instrument to the definition of “eligible child” in the interpretation provision (regulation 2(1)) of the Principal Regulations. The amendment has the result 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;”

The above image has been inserted as the report publishing software cannot properly replicate the appropriate formatting. For accessibility purposes, the text of the image 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;”*

13. The Scottish Government agreed this was an error and intends to correct it in an amending instrument.

14. The Committee considers that sub-paragraph (c), as amended, is obviously wrong; it is not obvious to the reader what the provision should say; and it appears in a provision of particular significance, namely a definition.

15. The Committee therefore reports on reporting ground (i) that the drafting of regulation 2(2)(b) appears to be defective in that it impedes the operation of a defined term.

16. **Question 2** concerned the correction of the term “immediate choice election”, which was used in the Principal Regulations but was not defined. The question had two parts.

17. Regarding the first part of the question, the Committee asked in 2023 whether it would be clearer to use a defined term, noting that “immediate choice decision” and “section 6 election” are defined. The response in 2023 was that this should refer to “immediate choice decision”. However, the correction in the present instrument is to “section 6 election”. It therefore asked for confirmation that the appropriate term is in fact “section 6 election”, and has received this confirmation. The Committee is content that no reporting grounds are engaged.

18. Regarding the second part of Question 2, the instrument corrects only one of the two 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”. The Scottish Government confirmed that this is an oversight and that it will be corrected in an amending instrument.

19. The Committee reports this point on the general reporting ground.

20. **Question 3** concerned an error in regulation 12(11) of the Principal Regulations which regulation 2(5)(b) of the instrument sought to correct. In short, the original error was that the provision obliged “the beneficiary” to pay an amount to “the beneficiary”. In 2023, the Scottish Government agreed that this should read “to the scheme manager”. The correction, however, obliges “the scheme manager” to pay “the beneficiary”, which is the wrong way round.
21. The Scottish Government has now confirmed that its original answer was correct, and agrees that the drafting does not achieve the intended effect. The Scottish Government has advised that it will correct this error in an amending instrument.
22. The Committee reported the original error for defective drafting given that the error concerns a matter of significance, namely to whom the money is to be paid. The attempted correction has, if anything, made matters worse: while the original provision did not work, the new provision requires the wrong person to make payment.
23. The Committee notes the assurance given in the Scottish Government’s answer that the situation of an overpayment being made to a beneficiary has not arisen.

24. The Committee reports on reporting ground (i) that the drafting of the amendment to regulation 17(11) appears to be defective given the new error concerning to whom the money is to be paid.

25. **Question 4** asked why the instrument corrects “deferred choice election decision” to the defined term “deferred choice decision” in regulations 13(4) and 16(b) of the Principal Regulations (regulation 2(6) and (8) of the instrument), 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”. The Scottish Government confirmed that this is an oversight and will correct it in the amending instrument.

26. The Committee reports this point on the general reporting ground.

27. **Question 5** concerned regulation 2(12)(b) of the instrument, amending regulation 49(1) of the Principal Regulations.
28. This provision changes the definition of “ill-health benefits”, including by inserting reference to a “2006 IHR member”. The Committee asked whether this should be “2007 IHR member”. The Scottish Government confirmed that it should, and that it will be corrected in the amending instrument.

29. The Committee reports this point on the general reporting ground.

30. In identifying this error, the Committee noticed another error in the Principal Regulations which it did not pick up in 2023, that in the definition of “alternative scheme”, the reference to “2006 IHR member” should also be “2007 IHR member”. The Committee raised this with the Scottish Government, which confirmed that this point will also be corrected in the amending instrument.

31. The Committee notes that the Scottish Government intends to correct this point.

32. **Question 6** concerns the term “surviving partner” in the Principal Regulations.

33. In the Committee’s original questions in 2023 on the Principal Regulations, the Committee noted that regulation 54(1)(b) refers to the term “surviving partner” but that this term is not defined in the instrument or the parent Acts. The Scottish Government agreed, at that time, that additional clarity would be beneficial, and regulation 2(17)(a)(ii) of the present instrument inserts a new definition.

34. 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. The Committee asked whether this was an error.

35. The Scottish Government advised that it is not of the view that this is a material error, given that regulation 2(4) of the Principal Regulations provides for the definition, but agreed that amending the instrument would provide clarity. The Scottish Government advised that, since amendments will be made anyway in response to the other questions, it will address this error in the amending instrument.

36. The Committee notes that this point will be addressed in the amending instrument.

37. **Question 7** concerns the correction of an error in the preamble of the Principal Regulations (that the reference to paragraph 6(a) of schedule 2 of the 2013 Act should be to paragraph 6(c)). The Scottish Government advised in its response to the Committee in 2023 that it would correct this by correction slip and that the SI Registrar had already confirmed that this would be acceptable. However, this has not been done as the correction slip is not showing on the public record. The Committee asked for an explanation.

38. The Scottish Government apologised for this oversight and advised that it will now deal with the correction slip.

39. In relation to this point, the Committee:

- **reports on the general reporting ground, in that the Scottish Government's commitment of 12 September 2023 to correct an error in the preamble of the Principal Regulations by correction slip has not been fulfilled; and**
- **notes that the Scottish Government has advised that it will now deal with the correction slip as soon as practicable, and before the amending instrument is laid.**

40. **Question 8** relates to new provision made by this instrument. The question has three parts, all concerning new regulation 51A(1) of the Principal Regulations, which is inserted by regulation 2(13) of the instrument.

41. First, the Scottish Government has accepted that the reference in new regulation 51A(1)(b)(ii) to Schedule 2 should be to Schedule 1, and will address this in the amending instrument.

42. The Committee reports this point on the general reporting ground.

43. Second, the Committee asked if the reference in brackets to "as defined in Part 1 of Schedule [2] of the 2007 Order" was 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 if it was intended to apply only to "transition date". If the former, it asked whether this was sufficiently clear. The Scottish Government has responded that it is intended to apply to the latter. The Committee is content that no reporting grounds are engaged.

44. Third, the Committee noted that 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". It asked if the abbreviations were intentional. The Scottish Government replied that it considers the abbreviations to be sufficiently clear. The Committee considers that when relying on a defined term, best practice is to cite accurately the whole term. However, in the context of this provision it considers that there is no real likelihood of the terms being misunderstood. The Committee is content that no reporting grounds are engaged.

45. **Question 9** also relates to new provision made by this instrument in relation to new regulation 51A.

46. The Committee asked whether the reference in new regulation 51A(7)(b) to "that part" should be to Part 11 (rather than Part 12) of the 2015 Regulations. The Scottish Government has confirmed that the reference is incorrect.

47. The answer to question 9 indicated that this error will be addressed in the amending instrument.

48. The Committee reports this point on the general reporting ground.

49. The Committee notes that the Scottish Government intends to address the points mentioned in paragraphs 15, 19, 24, 26, 29, 31, 36, 42 and 48 above in an amending instrument which will be laid before summer recess.

50. The lead committee for this instrument is the Criminal Justice Committee.