



The Scottish Parliament
Pàrlamaid na h-Alba

SUBORDINATE LEGISLATION COMMITTEE

AGENDA

9th Meeting, 2013 (Session 4)

Tuesday 12 March 2013

The Committee will meet at 10.30 am in Committee Room 3.

1. **Instruments subject to affirmative procedure:** The Committee will consider the following—

[Welfare Reform \(Consequential Amendments\) \(Scotland\) \(No. 2\) Regulations 2013 \[draft\].](#)

2. **Instruments subject to negative procedure:** The Committee will consider the following—

[Police Service of Scotland \(Performance\) Regulations 2013 \(SSI 2013/61\);](#)

[Police Appeals Tribunals \(Scotland\) Rules 2013 \(SSI 2013/63\);](#)

[Public Transport Users' Committee for Scotland \(Removal of Functions\) Order 2013 \(SSI 2013/79\);](#)

[Welfare Reform \(Consequential Amendments\) \(Scotland\) Regulations 2013 \(SSI 2013/65\);](#)

[Road Traffic \(Permitted Parking Area and Special Parking Area\) \(East Renfrewshire Council\) Designation Order 2013 \(SSI 2013/67\);](#)

[Road Traffic \(Parking Adjudicators\) \(East Renfrewshire Council\) Regulations 2013 \(SSI 2013/68\);](#)

[Parking Attendants \(Wearing of Uniforms\) \(East Renfrewshire Council Parking Area\) Regulations 2013 \(SSI 2013/69\);](#)

[National Health Service \(Superannuation Scheme and Pension Scheme\) \(Scotland\) Amendment Regulations 2013 \(SSI 2013/70\);](#)

[Financial Assistance for Environmental Purposes \(Scotland\) Order 2013 \(SSI 2013/74\);](#)

[Individual Learning Account \(Scotland\) Amendment Regulations 2013 \(SSI 2013/75\);](#)

[Police Service of Scotland \(Temporary Service\) Regulations 2013 \(SSI 2013/76\);](#)

[Education \(Fees, Awards and Student Support\) \(Miscellaneous Amendments\) \(Scotland\) Regulations 2013 \(SSI 2013/80\);](#)

[Food \(Miscellaneous Amendment and Revocation\) \(Scotland\) Regulations 2013 \(SSI 2013/83\);](#)

[Food Safety \(Sampling and Qualifications\) \(Scotland\) Regulations 2013 \(SSI 2013/84\);](#)

[Sale of Tobacco \(Display of Tobacco Products and Prices etc.\) \(Scotland\) Regulations 2013 \(SSI 2013/85\);](#)

[Police Federation \(Scotland\) Regulations 2013 \(SSI 2013/86\);](#)

[Council Tax \(Information-sharing in relation to Council Tax Reduction\) \(Scotland\) Regulations 2013 \(SSI 2013/87\).](#)

3. **Instruments not subject to any parliamentary procedure:** The Committee will consider the following—

[Private Rented Housing \(Scotland\) Act 2011 \(Commencement No. 6 and Savings Provisions\) Order 2013 \(SSI 2013/82 \(C.6\)\).](#)

Euan Donald
Clerk to the Subordinate Legislation Committee
Room T1.01
Tel: 0131 348 5212
Email: euan.donald@scottish.parliament.uk

The papers for this meeting are as follows—

Agenda Items 1, 2 and 3

Legal Brief (private)

SL/S4/13/9/1(P)

Agenda Item 2

Instrument Responses

SL/S4/13/9/2

SUBORDINATE LEGISLATION COMMITTEE**9th Meeting, 2013 (Session 4)****Tuesday 12 March 2013****Instrument Responses****INSTRUMENTS SUBJECT TO NEGATIVE PROCEDURE****Police Service of Scotland (Performance) Regulations 2013 (SSI 2013/61)****On 1 March 2013, the Scottish Government was asked:**

Regulation 21(1) enables the chief constable, where it is considered necessary, to fix an appeal hearing "...for the purpose of affording the opportunity of making oral representations to— (a) the appellant; and (b) the chairing constable." Regulation 22(1) provides that the chief constable must determine the appeal on the basis of the information specified in sub-paragraphs (a) to (e) of regulation 22(1). In particular, regulation 22(1)(d) obliges the chief constable to determine the appeal on the basis of "any representations made by the constable at the appeal hearing". There is no provision, however, obliging the chief constable to determine the appeal on the basis of any representations made by the chairing constable at the appeal hearing. The Scottish Government is accordingly asked:

(a) Does it agree that, at an appeal hearing under regulation 21(1), the appellant and the chairing constable are both entitled to make oral representations to the chief constable?

(b) Does it agree that regulation 22(1) specifies the only matters which the chief constable may take into account in determining an appeal – and, if not, why does it take a different view?

(c) Does it accordingly follow that the chief constable may not take into account the oral representations made by the chairing constable in terms of regulation 21(1), and if so does this represent the Scottish Ministers' policy intention?

(d) What does the Scottish Government consider to be the consequences of this position, particularly in relation to the procedural fairness of any determination of the appeal by the chief constable where oral representations have been made by both the appellant and the chairing constable?

The Scottish Government responded as follows:

We thank the Committee for raising the questions above and adopt the same numbering in response.

(a) An appeal hearing may be fixed for the purpose of affording an opportunity to make representations to the appellant and the chairing constable where that is necessary for the determination of the appeal. This does not mean that where an appeal hearing is fixed both the appellant and chairing constable acquire a right to

make oral representations. Rather, the chief constable may afford a right to make representations to such of them as is necessary for the determination of the appeal. In practice it is difficult to envisage an appeal hearing taking place in the presence of the chairing constable only, but rather less difficult to envisage it taking place in the presence of the appellant only.

(b) We agree that regulation 22(1) specifies the only matters the chief constable may take into account when determining the appeal.

(c) We agree that it follows that the chief constable may not take into account oral representations (if any) made by the chairing constable at an appeal hearing. We note that this reflects the position as set out in regulation 21 of the Police (Efficiency) (Scotland) Regulations 1996. The Committee will be aware that the Scottish Ministers' policy is to replicate, so far as possible within a single Service structure, the policy encapsulated in the existing regulations made under section 26 of the Police (Scotland) Act 1967. In doing so, in this case, it is apparent that an anomaly in the process established by the 1996 Regulations has been carried forward into the current instrument.

The Committee will be aware that the Scottish Government wrote on 4 March undertaking to bring forward regulations to amend the Police Service of Scotland Regulations and the Police Service of Scotland (Special Constables) Regulations. We intend to take the opportunity to use that instrument to amend regulation 22 of the Police Service of Scotland (Performance) Regulations to permit the chief constable to consider any representations made by the chairing constable at an appeal hearing.

(d) That notwithstanding, we do not consider that any procedural unfairness arises from the process established by the Regulations. While the chairing constable may be afforded an opportunity to make oral representations, those representations are made in the knowledge that they are not, in themselves, to be taken into account in the determination of the appeal. It is therefore clear before the process commences that these representations are not by themselves relevant considerations in the determination of the appeal.

No prejudice is suffered by either the chairing constable or the appellant by virtue of this approach. The chairing constable has no right or interest at stake in the proceedings and the appellant is entitled to put his or her own case orally and in writing and have both considered and tested against the chairing constable's original determination (which must also be taken into account in the determination of the appeal).

Police Appeals Tribunals (Scotland) Rules 2013 (SSI 2013/63)**On 1 March 2013, the Scottish Government was asked:**

Paragraph 1(1) of schedule 3 to the Police and Fire Reform (Scotland) Act 2013 provides that a police appeals tribunal is to consist of three members. Rule 15(6) provides that, if one member of the tribunal (other than the chairing member) is absent after the commencement of the hearing, the appeal may be heard by the remaining members (if the parties consent). What power has been relied upon to make provision to this effect? If the power relied upon is the general power to make rules about procedure on appeal to a police appeals tribunal in paragraph 3 of schedule 3, the Scottish Government is asked to explain why this is considered to be sufficiently broad to permit provision of this nature which derogates from the provisions of paragraph 1(1). We observe that while similar provision may have been made in respect of other statutory tribunals (e.g. the Parole Board), the examples of which we are aware are made in virtue of a specific enabling power (e.g. section 20(4)(a) of the Prisoners and Criminal Proceedings (Scotland) Act 1993 in respect of the Parole Board).

The Scottish Government responded as follows:

The Scottish Government thanks the Committee for raising this point. Section 125(1) of, and paragraph 4 of schedule 3 to, the Police and Fire Reform (Scotland) Act 2012 (“the 2012 Act”) are relied upon to make the supplementary provision in rule 15(6) and those powers are cited in the preamble to the instrument. Paragraph 1 of schedule 3 to the 2012 Act sets out the requirements for initial constitution of a police appeals tribunal. That is unaltered by the provision in rule 15(6). Rather, rule 15(6) deals with the circumstance of a tribunal constituted in compliance with paragraph 1 of schedule 3 which later becomes absent a member. Rule 15(6) makes supplementary procedural provision so that, if parties agree, the proceedings may continue. We therefore consider there is vires for the provision and that all of the relevant powers have been cited in the preamble.

The Welfare Reform (Consequential Amendments) (Scotland) Regulations 2013 (SSI 2013/65)**On 28 February 2013, the Scottish Government was asked:**

Regulation 5(2) refers to regulation 6(3) and Part 3 of Schedule 1 to the Social Security (Personal Independence Payment) Regulations 2013 (SI 2013/377), to define which recipients of "PIP" shall be eligible for a disabled person's badge under the 2000 Regulations. Regulations 5(4)(b) and 9(3)(d) also refer to the Personal Independence Payment (Transitional Provisions) Regulations 2013 (SI 2013/387), in making provisions relating to when a badge needs to be returned, and certain persons who are eligible for the purposes of the National Bus Travel Concession Scheme. At the date of making these Regulations and as yet to date, SI 2013/377 and 387 have not been published on www.legislation.gov.uk.

(a) Please confirm when it is anticipated those Regulations will be made and published (or alternatively when they have been made) and why they can only be made and published later than these Regulations.

(b) Are you in a position to explain the provision that will be made in those Regulations, or forward a copy of them as made.

(c) Why could these Regulations not have been amended once SI 2013/377 and 387 have been made, to insert the references, or the provisions explained in full without the cross-references, as this would have avoided reference in this instrument to provisions whose meanings cannot be established at the date of publication of the instrument?

The Scottish Government responded as follows:

(a) These two SIs were made on 25 February and published on 4 March. Whilst 25 February had been indicated to us by the UK Government in advance as the likeliest making date, there was no absolute guarantee that the instruments would be signed then. In light of the need to comply with the 28-day rule and the fact that we had indicated to the Welfare Reform Committee some weeks ago that we would seek to lay planned instruments under the Welfare Reform (Further Provision) (Scotland) Act 2012 no later than 27 February, it was considered preferable to make SSI 2013/65 in advance of the Westminster SIs rather than to wait and see whether the SIs were in fact made on 25 February. This decision was made after seeing drafts of the SIs, one of which was subject to affirmative procedure and had therefore been formally laid in draft at Westminster some time before.

(b) Versions of the SIs (in the form in which they were made) were forwarded on 1 March.

(c) In all the circumstances, we did not consider it necessary to proceed as suggested in question (c) nor that this would have been a helpful way in which to legislate.