



The Scottish Parliament  
Pàrlamaid na h-Alba

## LOCAL GOVERNMENT AND REGENERATION COMMITTEE

### AGENDA

5th Meeting, 2016 (Session 4)

Wednesday 3 February 2016

The Committee will meet at 10.00 am in the Robert Burns Room (CR1).

1. **Decision on taking business in private:** The Committee will decide whether to take items 7 and 8 in private.

2. **Subordinate legislation:** The Committee will take evidence on the Local Authority (Capital Finance and Accounting) (Scotland) Regulations 2016 [draft] from—

John Swinney, Deputy First Minister of Scotland and Cabinet Secretary for Finance, Constitution and the Economy;

Hazel Black, Head of Local Authority Accounting, Local Government Finance and Local Taxation Unit, and Colin Brown, Senior Principal Legal Officer, Scottish Government.

3. **Subordinate legislation:** John Swinney (Deputy First Minister and Cabinet Secretary for Finance, Constitution and Economy) to move—S4M-15459—That the Local Government and Regeneration Committee recommends that the Local Authority (Capital Finance and Accounting) (Scotland) Regulations 2016 [draft] be approved.

4. **Draft Budget Scrutiny 2016-17:** The Committee will take evidence on the Scottish Government's Draft Budget 2016-17 from—

John Swinney, Deputy First Minister of Scotland and Cabinet Secretary for Finance, Constitution and the Economy;

Graham Owenson, Head, and Douglas McLaren, Policy Officer, Local Government Finance and Local Taxation Unit, Scottish Government.

5. **Subordinate legislation:** The Committee will consider the following negative instrument—

Local Government Pension Scheme (Scotland) Amendment (No. 2) Regulations 2015 (SSI 2015/448).

6. **Scottish Public Services Ombudsman:** The Committee will take evidence from—

Jim Martin, Scottish Public Services Ombudsman;

Niki Maclean, Director, Paul McFadden, Head of Complaints Standards, and Emma Gray, Head of Policy and Communications, Scottish Public Services Ombudsman.

7. **Scottish Public Services Ombudsman:** The Committee will consider the evidence it has received.

8. **Draft Budget Scrutiny 2016-17:** The Committee will consider the evidence it has received.

David Cullum  
Clerk to the Local Government and Regeneration Committee  
Room T3.60  
The Scottish Parliament  
Edinburgh  
Tel: 0131 348 5223  
Email: david.cullum@scottish.parliament.uk

The papers for this meeting are as follows—

**Agenda item 2 and 3**

Paper by the Clerk

LGR/S4/16/5/1

**Agenda item 4**

PRIVATE PAPER

LGR/S4/16/5/2 (P)

**Agenda item 5**

Paper by the clerk

LGR/S4/16/5/3

**Agenda item 6**

PRIVATE PAPER

LGR/S4/16/5/4 (P)

**Local Government and Regeneration Committee**

**5<sup>th</sup> Meeting, 2016 (Session 4), Wednesday, 3 February 2016**

**Subordinate legislation**

**Introduction**

1. This paper seeks to inform members' consideration of the [Local Authority \(Capital Finance and Accounting\) \(Scotland\) Regulations 2016 \[draft\]](#)

**Local Authority (Capital Finance and Accounting) (Scotland) Regulations 2016 [draft]**

*Background*

2. The instrument was laid on 19 January 2016 – and re-laid on 25 January – and this Committee has been designated the lead committee. The lead committee must report on the instrument by 7 March 2016.

3. The above instrument was made in exercise of the powers conferred by section 165 of the Local Government etc. (Scotland) Act 1994.

4. Members will note this is an affirmative instrument. At the meeting, members will have an opportunity to question the Deputy First Minister and Cabinet Secretary for Finance, Constitution and Economy and his officials on the instrument. Afterwards the Minister will be invited to speak to the instrument and move a motion recommending that the instrument be approved. The Committee will then be able to debate the motion for up to 90 minutes. At the end of the debate, the Committee will be asked to agree that the motion be agreed to.

*Policy objectives*

5. The policy objective of this instrument is to provide local authorities with greater autonomy and responsibility for decisions on borrowing and on the repayment of that borrowing. In making those decisions a local authority is to act prudently and to have regard to generally recognised codes of practice and to guidance in relation to capital finance and treasury management. The CIPFA Prudential Code and the CIPFA Treasury Management Code are both recognised codes of practice for the public sector.

6. The Regulations do not specify how a local authority may raise money for borrowing, leaving this at its discretion, as long as it has regard to generally recognised codes of practice.

7. The 1975 Act sets out the purposes for which a local authority may borrow; for financing capital expenditure of the local authority, for treasury cash flow purposes and to lend to certain other statutory bodies. Local authorities may borrow for the same purposes in the Regulations. Recognising that local authorities often work in partnership with other public, third sector, or private bodies the Regulations will also allow a local authority to borrow to support the capital investment plans of third

parties. The support may either be in the form of a grant or through direct expenditure on third party assets. The new provision is consistent with the conditions of the Scottish Government capital grant paid to local authorities which permits a local authority to use the capital grant for these same purposes.

8. The value of a loans fund will increase whenever an advance is made for expenditure incurred, or loans made, in any financial year. The value of the loans fund will reduce when loans fund advances are repaid by making a charge to the General Fund or Housing Revenue Account. The balance of a loans fund at 31 March each year represents the amount of past expenditure a local authority has a liability to meet from its future revenue budgets.

9. The Regulations provide that flexibility replacing detail with a requirement for a local authority to administer a loans fund in accordance with the Regulations, proper accounting practices and prudent financial management.

#### *Impact Assessments*

10. The Regulations are financial in nature, dealing with the powers of local authorities to borrow, to lend and to administer loans funds. A Privacy Impact Assessment (PIA) has not been undertaken as the Regulations do not deal with personal information. An Equality Impact Assessment (EQIA) has not been undertaken as the Regulations do not affect people or any section of the population. A Strategic Environmental Assessment (SEA) has not been undertaken as the Regulations have no provisions which would impact the environment.

#### *Financial effects*

11. The Deputy First Minister and Cabinet Secretary for Finance, Constitution and Economy has confirmed that no Business and Regulatory Impact Assessment (BRIA) is required as the Regulations have no significant financial effects on the Scottish Government, local government or business.

#### *Issues the Committee may wish to consider*

12. The Delegated Powers and Law Reform Committee will consider these Regulations at its meeting on 2 February 2016. In advance of this meeting, Scottish Parliament solicitors wrote to the Scottish Government, on behalf of the DPLRC, to highlight a number of questions and seek clarification ahead of the DPLRC's meeting on 2 February.

13. The Scottish Government's response to the DPLRC is provided at Annexe A. Members will note that the Scottish Government withdrew and re-laid the instrument in order to address some of the issues highlighted by the DPLRC.

14. The Clerks will provide members with an update on the DPLRC's consideration of this instrument at the meeting.

**Recommendation**

15. Members are invited—

- To take evidence from the Deputy First Minister and Cabinet Secretary for Finance, Constitution and Economy on the draft instrument (item 1); and then
- Debate and then consider motion S4M-15459 (item 2).

**Steven Iserhoff  
Committee Assistant**

## **CORRESPONDENCE BETWEEN DELEGATED LEGISLATION AND LAW REFORM COMMITTEE AND SCOTTISH GOVERNMENT**

On 21 January 2016 the Scottish Government was asked:

The Delegated Powers and Law Reform Committee will consider the draft Local Authority (Capital Finance and Accounting) (Scotland) Regulations 2016 at its meeting on Tuesday 2 February 2016. The Committee has delegated authority to its legal advisers to ask questions directly of the Scottish Government.

1. The enabling power in section 165 of the Local Government etc. (Scotland) Act 1994 confers power to make provision about the powers of authorities to borrow and lend money. "Authority" is defined at section 165(6) and means a local authority, a joint board or the Strathclyde Passenger Transport Authority.

The regulations make provision for borrowing and lending by local authorities. "Local authority" is defined for the purposes of the regulations as "a council..., a joint board... and the Strathclyde Partnership for Transport...".

Please explain if the Strathclyde Partnership for Transport is a statutory successor to the Strathclyde Passenger Transport Authority, and if so how its functions were transferred.

2. The following terms are used in the regulations without definition:  
(a) "service concession arrangement" (regulation 1(2));  
(b) "treasury management activities" (regulation 2(1)(d)); and  
(c) "prudent financial management" (regulation 12(2)).

Please explain whether you consider the meaning of these terms, as they are intended to be applied in the regulations, to be sufficiently clear.

3. Regulation 15(1) amends section 37(1) of the Local Government (Scotland) Act 1975 to omit the words ", except in paragraph 6 of Schedule 3", from the definition of "prescribed" in that section. Paragraph 6 of Schedule 3 to the 1975 Act was repealed by Schedule 14 to the 1994 Act. That repeal has not yet been commenced, but is to be commenced on 1st April 2016 by the Local Government etc. (Scotland) Act 1994 (Commencement No. 9) Order 2016.

Is the amendment, properly construed, consequential on provision made in these regulations, or is it consequential on the repeal of paragraph 6 of Schedule 3 to the 1975 Act? Depending on your answer, what enabling power is relied on to make the amendment?

4. Regulation 15(2)(c) repeals a number of the definitions in paragraph 31 of Schedule 3 to the 1975 Act. The definitions repealed are definitions of terms used in various paragraphs of Schedule 3 to the 1975 Act which are repealed by Schedule 14 to the 1994 Act. Once again, the repeals are to be commenced on 1st April 2016 by the Local Government etc. (Scotland) Act 1994 (Commencement No. 9) Order 2016.

Are the repeals of the definitions in paragraph 31, properly construed, consequential on provision made in these regulations, or are they consequential on the repeal of the relevant paragraphs of Schedule 3 to the 1975 Act? Depending on your answer, what enabling power is relied on to make the provision in regulation 15(2)(c)?

5. Regulation 15(3) amends section 33(1) of the Order in the Schedule to the Tay Road Bridge Order Confirmation Act 1991 to omit the reference to the powers of councils under Schedule 3 to the 1975 Act to lend money. Those powers are repealed by Schedule 14 to the 1994 Act. That repeal is once again to be commenced on 1st April 2016 by the Local Government etc. (Scotland) Act 1994 (Commencement No. 9) Order 2016.

Is the repeal of the relevant words in section 33(1) of the Order in the Schedule to the Tay Road Bridge Order Confirmation Act 1991, properly construed, consequential on provision made in these regulations, or is it consequential on the repeal of the relevant paragraphs of Schedule 3 to the 1975 Act? Depending on your answer, what enabling power is relied on to make the provision in regulation 15(3)?

6. Regulation 16 revokes four instruments made in reliance on enabling powers in paragraph 5(1) of Schedule 3 to the 1975 Act. That paragraph was repealed by Schedule 14 to the 1994 Act but the repeal has not yet been commenced, and is not intended to be commenced in the forthcoming Commencement No. 9 Order. Please explain why the revocations are consequential on provision made in these regulations, and what enabling power is relied on to make the revocations.

The Scottish Government responds as follows:

1. The glossing reference that links various statutory references to the “Strathclyde Partnership for Transport” to the “Regional Transport Partnership for the West of Scotland” is to be found at article 3(3) of the Transfer of Functions from the Strathclyde Passenger Transport Authority and the Strathclyde Passenger Transport Executive to the West of Scotland Transport Partnership Order (S.S.I. 2006/106). As that latter body designs itself as the “Strathclyde Partnership for Transport”, the draft Regulations use that name, to assist users in identifying it, but the definition at regulation 1(2) makes the further link that is then needed to the statutory name.

2. The three terms in the question are familiar to the main audience of the Regulations. All take their natural meanings. If it assists the Committee: -

(a) a “service concession arrangement” is an arrangement whereby a public sector body contracts with a private operator to develop (i.e. to build or upgrade), operate and maintain the public body’s infrastructure assets (for example, schools). In lay language, these are often called Private Finance Initiatives (PFI) or Public Private Partnerships (PPP). They are a type of credit arrangement. The term is more fully described in an international financial reporting standard, IFRIC 12, which is generally recognised as providing proper accounting practices for local authorities.

(b) “treasury management activities” are all activities that, in accordance with accepted good practice, relate to the operational management of an organisation’s corporate treasury.

There is relevant guidance, ‘Treasury Management in the Public Services: Code of Practice and Cross-sectoral Guidance Notes’, published by the Chartered Institute of Public Finance and Accountancy, which the main audience will be aware of from its (separate) use in relation to local authority investments, as provided for by regulation 3 of the Local Government Investments (Scotland) Regulations 2010 (S.S.I. 2010/122) and, less overtly, by regulation 4 of the draft Regulations. The Code is mentioned in paragraph 4 of the Explanatory Note to the draft Regulations.

(c) “prudent financial management” has the meaning of “financial management”, with “prudent” added to ensure that a local authority acts prudently, when making the determination under regulation 14 of the draft Regulations as to the period and amount of repayments. Guidance to be issued if the draft Regulations are approved will set out what the Scottish Ministers consider to be prudent repayment. A draft of the proposed guidance formed part of the consultation that preceded the laying of the draft Regulations.

More generally, local authorities are familiar with the concept of “prudence” as they are already required to have regard to ‘The Prudential Code for Capital Finance in Local Authorities’ published by the Chartered Institute of Public Finance and Accountancy. The main audience will be aware of this Code from its (separate) use in relation to local authority capital expenditure limits, as provided for by regulation 2(2) of the Local Government Capital Expenditure Limits (Scotland) Regulations 2004 (S.S.I. 2004/29), by regulation 3 of the Local Government Investments (Scotland) Regulations 2010 (S.S.I. 2010/122) and, less overtly, by regulation 4 of the draft Regulations. The Code is mentioned in paragraph 4 of the Explanatory Note to the draft Regulations.

3. Regulation 15(1) of the draft Regulations amends section 37(1) of the 1975 Act (the exception for paragraph 6, borrowing by issue of bills), because that provision will be otiose, as a result of the approach of the draft Regulations. The Scottish Ministers will no longer be prescribing specific type of borrowing, with associated controls. Instead, what happens will be controlled through recognised codes of practice and guidance. Therefore the amendment, and the commencement of the repeal of the specific paragraph by the separate commencement order, are both consequential on provision that will be made by the draft Regulations. The power used is that at section 165(4) of the 1994 Act.

4. As with the answer to question 3, the Scottish Ministers were removing definitions that will become unnecessary due to the approach taken by the draft Regulations. The power envisaged was section 165(2) of the 1994 Act, as although the definitions also become otiose because of the revocations that are being commenced from the 1994 Act, those revocations are themselves consequential on the making of the draft Regulations (as explained in the answer to question 3). However, in looking at this the Scottish Ministers are concerned that the specific power to amend legislation in section 165(4) might be viewed as limiting the generality of the power at section 165(2). As there is no necessity to remove the

definitions, the Scottish Ministers think the safer course is to remove this provision from the draft Regulations and are withdrawing and re-laying them without it.

5. In relation to the Tay Road Bridge, what is being revoked is a reference to Schedule 3 of the 1975 Act that will cease to be relevant if the draft Regulations are made. The relevant councils would make the advances it relates to, once the draft Regulations are in force, under their regulation 10(b). This amendment therefore follows on the draft Regulations and is made under the power at section 165(4) of the 1994 Act.

6. The two instruments being revoked, along with two instruments that amend those instruments, make detailed provision about local authority mortgages, stocks and bonds. The draft Regulations leave the manner of such borrowing at the discretion of local authorities and the other bodies the draft Regulations apply to, subject to the controls set out in the draft Regulations. The controls in the instruments being revoked are therefore no longer appropriate. As the revocation is a consequence of the draft Regulations, the power at section 165(2) had originally been envisaged as the one being used. However, the issue referred to in answer 4 above concerning the terms of section 165(4) arises here too.

The revocation can be empowered by paragraph 5 of Schedule 3 to the 1975 Act. The Commencement No. 9 Order does not commence the repeal of that paragraph by the 1994 Act. This is because section 165 of the 1994 Act does not give a power fully to make equivalent provision. Retention of paragraph 5 will allow Scottish Ministers to use the powers it gives to regulate mortgages, stocks and bonds should that prove appropriate.

As the Scottish Ministers have decided to withdraw and re-lay the draft Regulations, as set out in the answer to question 4, the re-laid version will include reference to the power under the 1975 Act in the preamble. That power is subject to the negative procedure in the Scottish Parliament, but as the Committee will be aware, section 33 of the Interpretation and Legislative Reform Act allows regulations to which that procedure applies to be combined with the remainder of the draft Regulations (with the affirmative procedure applying to the whole instrument).

**POLICY NOTE**  
**THE LOCAL AUTHORITY (CAPITAL FINANCE AND ACCOUNTING)**  
**(SCOTLAND) REGULATIONS 2016**  
**SSI 2016 No. xxx**

The above Regulations, if approved by the Scottish Parliament, will be made in exercise of the powers conferred by section 165 of the Local Government etc. (Scotland) Act 1994. They are subject to affirmative procedure.

Section 165 enables Scottish Ministers to make provision as to the powers of local authorities to borrow and lend money and to operate loans funds. These will be the first such Regulations to be made.

The Regulations replace provision in Schedule 3 of the Local Government (Scotland) Act 1975, which will be repealed by commencement of parts of Schedule 14 to the 1994 Act, which provides for the repeal of that provision by the Local Government etc. (Scotland) Act 1994 (Commencement No. 9) Order 2016.

### **Policy Objectives**

The policy objective is to provide local authorities with greater autonomy and responsibility for decisions on borrowing and on the repayment of that borrowing. In making those decisions a local authority are to act prudently and to have regard to generally recognised codes of practice and to guidance in relation to capital finance and treasury management. The CIPFA Prudential Code and the CIPFA Treasury Management Code are both recognised codes of practice for the public sector.

The 1975 Act sets out ways a local authority may borrow, including from banks and the UK Public Works Loans Board or by issue of stocks or bonds. The Regulations do not specify how a local authority may raise money for borrowing, leaving this at its discretion, as long as it has regard to generally recognised codes of practice.

Capital expenditure is financed from a number of sources. When this is by borrowing money or a credit arrangement a debt liability is created to be repaid by a local authority from future revenues. The CIPFA Prudential Code sets out a framework for a local authority to demonstrate its capital investment plans are affordable, prudent and sustainable. A number of prudential indicators are set and monitored against three year capital expenditure plans. To demonstrate affordability an authority must set and monitor an authorised limit for external debt. This must be consistent with the authority's plans for capital expenditure and financing and with its treasury management policy statement and practices. The Regulations create a requirement for a local authority to set and monitor an authorised limit for external debt.

The 1975 Act sets out the purposes for which a local authority may borrow; for financing capital expenditure of the local authority, for treasury cash flow purposes and to lend to certain other statutory bodies. Local authorities may borrow for the same purposes in the Regulations. Recognising that local authorities often work in partnership with other public, third sector, or private bodies the Regulations will also allow a local authority to borrow to support the capital investment plans of third parties. The support may either be in the form of a grant or through direct expenditure on third party assets. The new provision is consistent

with the conditions of the Scottish Government capital grant paid to local authorities which permits a local authority to use the capital grant for these same purposes.

Both the 1975 Act and the Regulations require a local authority to maintain a loans fund. The value of a loans fund will increase whenever an advance is made for expenditure incurred, or loans made, in any financial year. The value of the loans fund will reduce when loans fund advances are repaid by making a charge to the General Fund or Housing Revenue Account. The balance of a loans fund at 31 March each year represents the amount of past expenditure a local authority has a liability to meet from its future revenue budgets.

The 1975 Act has detailed arrangements for administration of loans funds. Local authorities sought more autonomy to determine the period over which an advance is to be repaid and the amount of repayment in any financial year. The Regulations provide that flexibility replacing detail with a requirement for a local authority to administer a loans fund in accordance with the Regulations, proper accounting practices and prudent financial management.

Statutory accounting guidance is to be issued by Scottish Ministers using powers contained in section 12 of the Local Government in Scotland Act 2003. The guidance will identify options for the prudent repayment of loans fund advances, and will require local authorities to publish their policy on the repayment of loans fund advances.

### **Review and Consultation**

Local government requested a change in the legislation to give greater autonomy. A review group was established in December 2014 with representation from the Convention of Scottish Local Authorities (Directors of Finance and Treasury Managers), Audit Scotland and the Chartered Institute of Public Finance and Accountancy (CIPFA). The papers and minutes of the review group have been published on the Scottish Government website:

<http://www.gov.scot/Topics/Government/local-government/17999/LACapital/consultations>

There is no requirement for consultation. A four-week consultation was undertaken with all Scottish local authorities, Audit Scotland, CIPFA and external treasury management advisors.

### **Impact Assessments**

The Regulations are financial in nature, dealing with the powers of local authorities to borrow, to lend and to administer loans funds. A Privacy Impact Assessment (PIA) has not been undertaken as the Regulations do not deal with personal information. An Equality Impact Assessment (EQIA) has not been undertaken as the Regulations do not affect people or any section of the population. A Strategic Environmental Assessment (SEA) has not been undertaken as the Regulations have no provisions which would impact the environment.

No Business and Regulatory Impact Assessment (BRIA) is required as the Regulations have no significant financial effects on the Scottish Government, local government or business.

Scottish Government  
Local Government and Communities Directorate  
18 January 2016

**Local Government and Regeneration Committee**

**5<sup>th</sup> Meeting, 2016 (Session 4), Wednesday, 3 February 2016**

**Subordinate Legislation**

**Introduction**

1. This paper seeks to inform members' consideration of the following statutory instrument:

[The Local Government Pension Scheme \(Scotland\) Amendment \(No. 2\) Regulations 2015 \(SSI 2015/448\)](#)

**The Local Government Pension Scheme (Scotland) Amendment (No. 2) Regulations 2015**

*Background*

2. The instrument was laid on 21 December 2015 and this Committee has been designated the lead committee. The lead committee must report on the instrument by 15 February 2016.

3. The instrument is made under powers conferred by section 24(2) of the Public Service Pensions Act 2013 and section 12(6) of the Superannuation Act 1972 and all other powers enabling them to do so.

4. Members will note this is a negative instrument. This means the instrument will come into force on the specified date unless a motion to annul has been agreed to by the Parliament within the 40 day period.

*Policy objectives*

5. This instrument makes amendments to the Local Government Pension Scheme (Scotland) Regulations 1998 and the Local Government Pension Scheme (Benefits, Membership and Contributions) (Scotland) Regulations 2008 to allow for survivor benefits to be payable in relation to survivors of same sex marriages under old schemes which are carried over into the 2015 Scheme. A consequential change is also made to the Local Government Pension Scheme (Transitional Provisions) (Scotland) Regulations 2008.

6. This instrument also introduces further changes including changes to provide for the new shared parental leave, changes to the 1998 regulations to ensure that deferred ill health applications are considered by the administering authority rather than the former Scheme employer, and the introduction of a new regulation 25A into the Transitional Regulations to cover employer payments for historic liabilities. Similar exit and cessation type liabilities of employers are also dealt with by way of amendments to regulation 62 of the Main Regulations made by regulation 21 of these Regulations.

*Financial effects*

7. The Minister for Local Government and Community Empowerment has confirmed the instrument has no financial effects on the Scottish Government, local government or on business.

*Issues the Committee may wish to consider*

8. The Delegated Powers and Law Reform Committee considered these Regulations at its meeting on 19 January 2016.

9. In its [report](#) to the Parliament, the Committee concluded—

The Committee draws the instrument to the Parliament's attention under the general reporting ground in respect that regulation 29(e) inserts a definition of "the Transitional and Savings Regulations 2014" in Schedule 1 to the Local Government Pension Scheme (Scotland) Regulations 2014. The Scottish Government has confirmed that the policy intention was to insert a definition of "the Transitional Provisions and Savings Regulations 2014" in that Schedule.

The Committee notes that the Scottish Government has undertaken to correct the error by a further amending instrument, to come into force on 2 February 2016.

10. No motion to annul this instrument has been lodged.

**Steven Iserhoff**  
**Committee Assistant**

## **POLICY NOTE**

### **The Local Government Pension Scheme (Scotland) Amendment (No. 2) Regulations 2015 SSI 2015/448**

#### 1. Purpose of the instrument

1. This instrument amends the Local Government Pension Scheme (Scotland) 2014 Regulations (SSI 2014/164) and the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) (Scotland) Regulations 2014 (SSI 2014/233) which came into force on 1 April 2015.

1.2 These changes have arisen as the UK Government continues to reform public sector pensions provision and following those policy changes. We have also been working with stakeholders to identify areas in the 2014 regulations which require clarification. These amending regulations are the product of that work and reflect policy developments, including the flexibilities available as part of the Finance Act 2014.

1.3 These changes will provide those clarifications and will therefore improve efficiency in the administration of the scheme. They will not affect the operation of the scheme or the benefits payable to members.

1.4 Many of these amendments are technical in nature and have been made in response to points raised by the Delegated Powers and Law Reform Committee (DPLRC) in March 2015.

1.5 This instrument also makes amendments to the Local Government Pension Scheme (Scotland) Regulations 1998 and the Local Government Pension Scheme (Benefits, Membership and Contributions) (Scotland) Regulations 2008 to allow for survivor benefits to be payable in relation to survivors of same sex marriages under old schemes which are carried over into the 2015 Scheme. A consequential change is also made to the Local Government Pension Scheme (Transitional Provisions)(Scotland) Regulations 2008.

#### 2. Legislative context

2.1 The Independent Public Service Pensions Commission recommended a number of changes to public sector schemes in order to ensure long term sustainability as well as a more balanced distribution of costs between members, employers and the tax payer.

2.2 This instrument introduces further changes including changes to provide for the new shared parental leave, changes to the 1998 regulations to ensure that deferred ill health applications are considered by the administering authority rather than the former Scheme employer, and the introduction of a new regulation 25A into the Transitional Regulations to cover employer payments for historic liabilities. Similar exit and cessation type liabilities of employers are also dealt with by way of amendments to regulation 62 of the Main Regulations made by regulation 21 of these Regulations.

2.3 Further regulations to introduce same sex marriage and the transgender exception are made in accordance with the Marriage and Civil Partnership (Scotland) Act 2014.

### 3. Territorial Extent and Application

3.1 This instrument applies to Scotland.

### 4. Policy Objectives

4.1 The Regulations introduce amendments to the Local Government Pension Scheme (LGPS) in Scotland to ensure that they continue to provide valued benefits for scheme members, and are affordable, sustainable and fair to employers, scheme members and tax payers.

4.2 The objectives for the reform of the LGPS were to ensure the sustainability of the scheme by encouraging existing members remain in the scheme and non-members to join. Levels of contribution rates which will ensure protection of the lowest paid within the workforce and to continue to provide quality benefits to scheme members.

### 5. Consultation

5.1 A six week technical consultation exercise on the draft Local Government Pension Scheme (Scotland) (Amendment No. 2) Regulations 2015 commenced on 1 September 2015 and ended on 12 October 2015.

### 6. Impact Assessment

6.1 These Regulations have no new impact on business or the voluntary sector as they are amending Regulations to improve administration of the scheme and to implement other government policies.

### 7. Contact

7.1 If you have any queries regarding this instrument, please contact Annette Greenslade at the Scottish Public Pensions Agency;  
Tel: 01896 892464  
email: [annette.greenslade@gov.scot](mailto:annette.greenslade@gov.scot)

Scottish Public Pensions Agency  
An Agency of the Scottish Government

December 2015



27 January 2016

Kevin Stewart MSP  
Convener of the Local Government and Regeneration Committee  
The Scottish Parliament  
EDINBURGH  
EH99 1SP

Dear Convener,

Thank you for your letter of 13 January which sets out the Committee's approach to the 3 February evidence session. We note that the Committee undertook a short focussed inquiry on how well public sector organisations implement changes following recommendations by the SPSO. We understand that this will allow this year's evidence session to focus on being forward looking and concentrate on how scrutiny can be improved. We look forward to the Committee's questions about our annual report and draft strategic plan.

As the Committee is aware, we put a great deal of information about our performance into the public domain. On our website you can find: the minutes of our senior management team meetings; Audit and Advisory Committee meetings; meeting notes of our customer, local government and NHS sounding boards; regular reports about complaints we have received about our service; and, of course, almost all of the decisions we have made. We hope this means that anyone who is interested in our service can quickly and easily access the relevant information.

I appreciate the time the Committee have already spent considering our 2014-15 annual report and 2016-2020 draft strategic plan. In order to further assist the Committee, I am providing an update on our work over the first nine months of 2015-16 and also a summary of areas we expect will impact potentially significantly on us over the next two years.

Yours sincerely

Jim Martin  
Ombudsman

## Annex A

### SPSO performance update to the Local Government and Regeneration Committee

#### 1. Key numbers: April to December 2015-16

##### 1.1 Premature complaints

At this point in the year, the overall rate of complaints coming to us early has reduced by a couple of percentage points, which is what we said last year we wanted to see. The ongoing reduction in premature cases (down to just under 32% from 51% six years ago) is to be welcomed as it suggests people are getting their complaint dealt with at the right place and coming to SPSO properly as the last stage in the process.

- The overall premature rate over the past nine months is 31.7% compared with 36.3% at the same point in 2014-15<sup>1</sup>.
- For local government, the premature rate over the past nine months has dropped 4.9% to 38.3% and for health it has dropped 2.5% to 24.7%.

We believe the reduction is largely attributable to improvements in complaints handling brought about by the work of our Complaints Standards Authority (CSA) in developing and helping public bodies implement our simplified model complaints handling procedures (CHPs). Other ways in which our work has contributed to the decreasing trend is the focussed work we have done with some authorities that have had higher rates of premature complaints than other, comparable organisations, and the training courses we run. Our training is designed to teach skills and build confidence in complaints handling by frontline staff and complaints investigators, so that authorities deal with the issues properly first time.

##### 1.2 Upheld complaints

At this nine-month point, the overall uphold rate has increased by a couple of percentage points. It has increased in local government and health, and decreased in other areas (most significantly in the water sector where it has fallen by 16.8%). At this stage, we do not see any particular significance in the change in the rate of upheld complaints.

- The overall uphold rate over the past nine months is 52.8% compared with 49.2% at the same point in 2014-15<sup>2</sup>.
- In the past nine months the uphold rate has gone up 4% to 52.2% from 48.2% for local government complaints, and in health up 2.2% to 55.8% from 53.6%.

##### 1.3 Number of complaints

At this point in the year, the number of complaints coming to us has fallen for the first time since 2007-08 (when it fell by about 1%). We received 3,513 complaints, 4.6% less than in the first nine months of 2014-15, and we determined 3,530 complaints, 3.1% less than in the same nine months in 2014-15. We set out below some detail and explanations for this.

- The decrease is apparent across all sectors apart from higher and further education (a sector where the numbers are very small).
- In the two large sectors (together amounting to just over 70% of our workload), local government complaints are down 5.1% and health complaints are down 1%.

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<sup>1</sup> The 14/15 figures quoted are also nine-month figures to compare like with like. Full year figures were: overall premature rate of 34%; for local government 41% and for health 24%.

<sup>2</sup> For all of 2014-15 the overall uphold rate was 50%.

- Our productivity has remained high, and we have closed more cases than we have received. We have also continued to meet two of our three timeliness targets, and to maintain our improvement on the third target of decisions made within six weeks.

However, while overall case numbers have fallen, the number of cases that require more work is still significant, as set out below, and our overall caseload is set to grow with the forthcoming expansions to our remit described in section 4.

#### **1.4 Change in case profile**

The most significant change we have seen in this area is a 7.5% increase in health cases that are 'mature', i.e. those that are about a complaint that we can legally investigate and where the desired outcome is something we can achieve. In other sectors we have seen a decrease in 'mature' cases (down 4.2% for example in local government). Mature cases are those we take to investigation. Of all the cases that we investigated in the whole of 2014-15, 50.3% were about the health sector, and this proportion has risen to 56.9% in the first nine months of 2015-16. It is also notable that 32 of the 34 full public interest investigation reports we laid before Parliament in the past nine months have been about the NHS.

As we have highlighted in our draft strategic plan and elsewhere, NHS complaints can be complex and are cases that typically require specialist advice from health professionals and consist of multiple issues. This increases pressure on both SPSO staff time and resource, and the direct costs of sourcing that advice. We have seen a steady increase in the number of advice requests we make on health cases (internal and external): over the past nine months we made more than 650 requests, compared with around 550 over the same period in 2014 and approximately 450 in 2013.

## **2. Outcomes and learning**

The Committee has carried out its inquiry on the impact of our recommendations. As the Committee is aware, we publish all our decisions<sup>3</sup> and recommendations (indeed, we were the first UK Ombudsman office to do this) and any focus on the learning and improvement that stems from these is welcomed. As the Committee is also aware, each month we highlight any significant issues from the cases published, and, for example, in our latest Ombudsman's Commentary, we highlighted a range of issues we see in local authority complaints, including planning, noise nuisance and flooding<sup>4</sup>.

Due to resourcing issues this financial year, we have not been able to produce thematic reports detailing the kinds of complaints we receive about each sector. Nevertheless, we have put 745 decisions into the public domain and 1,065 recommendations. As the Committee is aware, we follow up each recommendation robustly, requiring the authority to evidence what it has done to implement the redress or improvement we asked for.

We also provided annual letters to all local authorities, NHS boards, the prison service and water providers we receive complaints about (as is the case each year)<sup>5</sup>. This provides a breakdown of the complaints that we investigated by subject, outcome and so one for each authority in the relevant year. We also provided annual statistics, and used case outcomes in some of our briefings and other communications material to illustrate or explain our work.

<sup>3</sup> In a small number of cases, we do not put information in the public domain, usually to prevent the possibility of someone being identified.

<sup>4</sup>[http://www.spsso.org.uk/sites/spsso/files/communications\\_material/commentary/2016/SPSocommentaryJanuary2016.pdf](http://www.spsso.org.uk/sites/spsso/files/communications_material/commentary/2016/SPSocommentaryJanuary2016.pdf)

<sup>5</sup> Available on our website <http://www.spsso.org.uk/statistics-2014-15>

### **3. Improving complaints handling**

Our 2014-15 annual report (pp24-31)<sup>6</sup> outlines the CSA's work in supporting public authorities in improving how they deal with complaints including:

- Monitoring complaints performance
- Developing performance indicators
- Progress in benchmarking
- Complaints handlers networks

#### **3.1 Local government complaints update**

In this sector, we involved a range of bodies in exploring ways to improve the analysis of complaints reports at a national level: the Accounts Commission, the Improvement Service (IS), COSLA, SOLACE, the Scottish Government and Audit Scotland.

For 2014-15, each local authority provided their council's 2014-15 annual complaints performance data in a standardised way to the IS to allow the IS to produce a report, with headline findings, for presentation at a local government complaints handlers network meeting last October. The headline figures from the IS report are:

- 66,003 complaints were received in 2014-15
- 62,177 complaints were closed in 2014-15
  - 81% were closed at stage 1
  - 19% were closed at stage 2
- 71% of Stage 1 complaints were upheld
- 61% of stage 2 complaints were upheld
- average time taken to respond to stage 1 complaints was 4.2 days
- average time taken to respond to stage 2 complaints was 18.8 days
- at stage 1, 81% of complaints were closed within 5 days
- at stage 2, 85% of complaints were closed within 20 days

The IS concluded that 'across the local government complaints handling sector the picture is broadly positive'. Although complaints numbers are up slightly on the previous year, the proportion of complaints resolved at the frontline stage 1 continues to remain above 80%. Nationally, four of every five complaints are fully responded to within the target timescales of the model CHP and there has been a significant increase in the percentage of complaints fully responded to within the CHP timescales at each stage of the procedure. We see this performance as a positive achievement for local government, leading other sectors in this regard. As an example of the wider usefulness of this work, we were pleased that the Accounts Commission have considered this information in assessing the reporting of local government complaints.

#### **3.2 Benchmarking**

The IS analysis and report will allow the complaints network to further benchmark their performances for improvement. Some breakdown of the complaints received by other factors (urban, rural and in relation to socio-economics) was provided. It is clear that there would be benefit to having further information on the breakdown of types of complaints and how they relate to the different council services, including trends around this. To this end, there was agreement to resurrect the work previously started to look at the standardisation of complaints categories across the sector. Further work will also be undertaken at future network meetings on the SPSO indicator relating to learning to help improve the information reported on this.

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<sup>6</sup> [http://www.spsso.org.uk/sites/spsso/files/communications\\_material/annual\\_report/SPSOAnnualReport2014-15.pdf](http://www.spsso.org.uk/sites/spsso/files/communications_material/annual_report/SPSOAnnualReport2014-15.pdf)

### **3.3 Supporting learning and improvement**

As we mention above, we provided individual SPSO statistics to authorities in our 2014-15 annual letter. In addition to providing this information, this year we sought assurances from local authorities (and NHS boards, the prison service and water providers) on their governance arrangements for this information, specifically to ensure it is being reported to allow them to learn from these reports and from SPSO cases and findings generally. Focus on learning and improvement is an important part of our work I am aware that this has been a strong focus of the Committee in their scrutiny of our performance. We were disappointed with the response from a small number of local authorities, who have yet to respond.

### **3.4 Moving on from the right procedures to a culture of getting it right**

As part of our statutory work in promoting best practice, we held a very well received cross-sectoral conference<sup>7</sup> last October, attracting 160 delegates. As well as presentations from speakers from SPSO and the health, water and finance sectors, we held three workshops:

- *Complaints Improvement Framework* – a self-assessment framework for organisations to assess how their complaints arrangements are working as they should - including accessibility, process, quality and governance - and to identify improvements that could be made.
- *Learning from complaints* – how can using a human factors approach help us make best use of all the information we now gather about complaints to maximise organisational learning and intelligence from complaints?
- *Quality assuring your responses* – helping organisations improve the quality of their complaints responses, get it right first time and prevent unnecessary escalation of complaints.

The workshops built on toolkits we have developed and published on our valuing complaints website, and the CSA and the complaints handlers networks are continuing to develop these on the back of feedback from stakeholders.

Looking ahead, in the local government sector we are keen for councils to develop further in the areas of quality and learning and start providing clearer outlines of what complaints information is telling them and where services have/could be improved on the back of root cause analysis. This is something which seems to be variable in councils' annual reports and we are working with the complaints handlers network and IS to help improve this.

## **4. Widening remit**

The next couple of years promise to be significant for the SPSO with a number of additional areas coming under jurisdiction.

### **4.1 Scottish Welfare Fund**

From 1 April 2016, we will take on a new role as the independent reviewer of SWF decisions. This role will give us, for the first time, the power to change directly decisions made by local authorities. In terms of numbers of cases, we are working on variable estimates provided by the Scottish Government based on the existing review scheme; currently our expectation is that we will receive 800-1,000 cases in the first year of operation, although the this could be significantly higher in future years on the basis of the Scottish Government's higher range estimates and rates of increase in tier 2 reviews in the current scheme. We will continue to monitor this and engage with the Scottish Government on any increase in numbers and the impact on our resources.

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<sup>7</sup> <http://www.valuingcomplaints.org.uk/sps-conference/>

We will be facing challenging timescales in which to make our decisions (one day from the receipt of all information in the case of Crisis Grants). Preparations are well underway and we have recruited staff for the new independent SWF review team (five in total). We are continuing to work closely with the Government and our two SWF sounding boards (made up of local authority and third sector representatives respectively) to ensure that we are on track to deliver the review service from 1 April. As well as developing the new guidance and process, we are expanding our website to include the new role and developing a suite of communications materials. On February 2, we will give evidence about our role to Parliament's Welfare Reform Committee which is looking at the regulations on the fund.

We consulted<sup>8</sup> on our approach to our new role and in particular our draft statement of practice. Overall, the responses were very positive about our stated approach and we will publish them and our analysis shortly.

#### **4.2 Health and social care, including social work and a model CHP for the NHS**

We are pleased that progress is at last being made on aligning health and social work complaints processes and ensuring that an integrated approach to complaints handling is reflected in the integration of health and social care services so far as is practicable. I would like to put on record my thanks to the Committee for their action and support in moving this work forward.

As part of this, we have been asked by the Scottish Government to bring the NHS into alignment with the model CHP, building on good work already undertaken by the NHS under the Patients Rights Act and by incorporating lessons learned from our work elsewhere in the public sector. We have been working with the Scottish Government and NHS providers and stakeholders to develop an NHS model CHP. This will continue into 2016/17 and we will be providing support to NHS providers. ahead of an implementation date of 1 April 2017.

Following consultation, the Scottish Government has brought forward proposed legislative changes to the social work complaints process which will allow us to develop a model CHP for this area of local authority responsibility, remove the existing Complaints Review Committee responsibility and allow us to consider professional judgement elements of these complaints. This will bring social work in line with the NHS where we can already assess clinical judgement. The proposed timescale for these changes is 1 April 2017, allowing SPSO and local authority social work departments time to prepare for and implement this important change.

The Scottish Government have committed to providing guidance for Integration Joint Boards on complaints arrangements in advance of the above changes proposed for April 2017. Their aim is to publish this in spring 2016.

The final part of this jigsaw is the Scottish Public Services Act 2002 Amendment Order 2016 currently before the Parliament in draft form and, if passed, will include integrated joint boards within our jurisdiction. This will come into force on the date after it is made.

#### **4.3 The named person and child's support plan**

Alongside these changes, there are proposals for a new complaints process related to the named person and child's support plan. Under the proposals we would be able to assess the merits of decisions related to wellbeing and we understand the government's plan is to create a process that will align with the model CHP, with an implementation date of 31 August 2016. Again, we are uncertain about the number of complaints to SPSO that this

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<sup>8</sup> <http://www.spsso.org.uk/news-and-media/spsso-consultation-scottish-welfare-fund-reviews>

change may bring about but will be engaging with the Scottish Government and SPCB on this now that proposals are being finalised.

## **5. Improving our service**

### **Customer Survey**

As we outline in our 2014-15 annual report (pp12-14) we have a strong focus on continuous improvement. We highlighted the significant project we undertook to review our service standards last year, explaining that these are a critical part of our quality assurance process and are also used when we assess complaints about the service we have delivered. As there is no appropriate BSI or ISO standard, we decided to develop a new set of standards ourselves. We asked others for input, such as our customer sounding board and other ombudsmen and other complaints handlers across the UK. The standards<sup>9</sup> have since been endorsed by the Ombudsman Association.

As we explained last year, we decided to change our usual approach to surveying our customers, which was via a paper survey every two years and/or focus groups. We wanted to get real time, regular, quantitative data on customer satisfaction so we could learn quickly if there were changes we needed to make. We ran a pilot to inform the new survey approach, ahead of starting to survey customers in receipt of an investigation decision from April 2015 onwards. We used our new standards in the survey. The 2015-16 results will be published in 2016-17 once the full results for the year have been gathered in. We are currently working on separate surveys that will help us get feedback from other service users, such as people who call us for advice, prisoners (who generally have a different set of communication needs) and public authorities.

### **6. Draft Strategic Plan 2016-2020**

Although the SPCB is the only statutory consultee, we put our Plan out to full public consultation<sup>10</sup> last year. We received a total of 18 responses, mostly from public authorities and advice and advocacy organisations that represent the public. We understand that one organisation has already provided the Committee with its response to the consultation. Although we are currently analysing all the responses and are not yet in a position to make our analysis public, we can let the Committee know that overall, respondents who commented on the high level objectives and equalities commitments laid out in the Plan supported them. Common themes were:

- support for our emphasis on encouraging organisations to get complaints handling right first time and ensuring that public authorities take ownership and responsibility for complaints handling;
- that our work should be targeted towards achieving real and tangible outcomes for the public; and
- the financial strain on the public sector generally.

There was praise for the work of the CSA. The top subject of comment was our proposal to set up a learning and improvement unit, followed by the challenge we laid out of static resources/rising demand; reviewing our performance indicators; the proportionality test; and the Scottish Welfare Fund.

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<sup>9</sup> <http://www.spsso.org.uk/customer-service-standards>

<sup>10</sup> <http://www.spsso.org.uk/news-and-media/spsso-launches-draft-strategic-plan-2016-20-consultation>

We are pleased with the clear support for the learning and improvement unit, the considerable benefits of which we outlined as enabling us to:

- support and advise public service organisations on the implementation of recommendations
- work with high volume generators of complaints to develop and support improvement initiatives
- reinforce the work currently undertaken by our Complaints Standards Authority to ensure recommendations support principles, model complaints handling procedures and good practice
- conduct impact assessment studies to assess and improve quality of recommendations to bring about change
- reduce the burden on SPSO complaints reviewers (no follow-up work from the recommendations) and therefore increase our productivity
- advise on, develop and track recommendations for consistency and knowledge management purposes.

We look forward to progressing this initiative, which we expect to have a significant impact on the on the quality of public authorities' complaints handling, leading to better justice for customers and better public services for us all.