



The Scottish Parliament
Pàrlamaid na h-Alba

LOCAL GOVERNMENT AND REGENERATION COMMITTEE

AGENDA

6th Meeting, 2016 (Session 4)

Wednesday 10 February 2016

The Committee will meet at 10.00 am in the Sir Alexander Fleming Room (CR3).

1. **Subordinate legislation:** The Committee will take evidence on the Freedom of Information (Scotland) Act 2002 (Designation of Persons as Scottish Public Authorities) Order 2016 [draft] from—

Joe FitzPatrick, Minister for Parliamentary Business;

Andrew Gunn, Freedom of Information Policy Officer, and Emily Williams, Solicitor, Scottish Government.

2. **Subordinate legislation:** Joe FitzPatrick (Minister for Parliamentary Business) to move—S4M-15235—That the Local Government and Regeneration Committee recommends that the Freedom of Information (Scotland) Act 2002 (Designation of Persons as Scottish Public Authorities) Order 2016 [draft] be approved.
3. **Subordinate legislation:** The Committee will consider the following negative instruments—

Local Governance (Scotland) Act 2004 (Remuneration) Amendment Regulations 2016 (SSI 2016/6);

Scottish Local Government Elections Amendment Order 2016 (SSI 2016/7);

Representation of the People (Absent Voting at Local Government Elections) (Scotland) Amendment Regulations 2016 (SSI 2016/8); and

Local Government Pension Scheme (Scotland) Amendment Regulations 2016 (SSI 2016/32).

4. **Follow-up from Scottish local government elections 2012:** The Committee

will take evidence from—

Mary Pitcaithly, Convener, and Chris Highcock, Secretary, Electoral Management Board for Scotland.

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The papers for this meeting are as follows—

Agenda items 1 and 2

Paper by the clerk

LGR/S4/16/6/1

Agenda item 3

Paper by the clerk

LGR/S4/16/6/2

Agenda item 4

PRIVATE PAPER

LGR/S4/16/6/3 (P)

Local Government and Regeneration Committee

6th Meeting, 2016 (Session 4), Wednesday, 10 February 2016

Subordinate legislation

Introduction

1. This paper seeks to inform members' consideration of the [Freedom of Information \(Scotland\) Act 2002 \(Designation of Persons as Scottish Public Authorities\) Order 2016 \[draft\]](#).

Freedom of Information (Scotland) Act 2002 (Designation of Persons as Scottish Public Authorities) Order 2016 [draft]

Background

2. The instrument (attached at Annexe A) was laid on 12 January 2016 and this Committee has been designated the lead committee. The lead committee must report on the instrument by 29 February 2016.

3. This Order is laid in exercise of powers set out at section 5(1) of the Freedom of Information (Scotland) Act 2002.

4. Members will note this is an affirmative instrument. At the meeting, members will have an opportunity to question the Minister for Parliamentary Business 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 the motion.

Policy objectives

5. The policy objective of this order is to extend coverage of freedom of information legislation to contractors overseeing and managing private prisons, bodies providing secure accommodation for children and young people, grant-aided schools, independent special schools and Scottish Health Innovations Limited (SHIL).

6. This is the second order brought forward under section 5(1) of the Act; the first came into force on 1 April 2014 and covers arms-length culture, sport and leisure trusts established by local authorities.

7. In the interests of transparency and accountability, the Scottish Government considers it appropriate that such bodies should be subject to the provisions of the Act. Designating such bodies as Scottish public authorities for the purposes of the Act would also remove the anomalous situation whereby bodies providing identical services, but which are (in the case of a school or secure unit) within a local authority, or, in the case of prisons owned by the Scottish Prison Service, are already subject to freedom of information legislation.

8. The changes in this draft order will come into force on 1 September 2016.

Consultation

9. The Scottish Government consulted publicly in summer 2015 on extending coverage of the Act to contractors running private prisons, secure accommodation providers, grant-aided schools and independent special schools. SHIL were also consulted separately. The consultation made clear that this order would primarily focus on education and security, but that, as part of the Scottish Government's incremental approach to increasing coverage, other orders were likely to be brought forward in future to cover other bodies.

10. 100 individuals and organisations responded to the consultation. The consultation paper and responses to the consultation (where the consultee gave consent for them to be published) and the Scottish Government's response to the consultation is published on the [Citizen Space website](#).

Impact assessment

11. The Scottish Government's consultation did not identify any equalities issues regarding the extension of coverage and it concluded that extension would not have any significant impact on members of any particular equality group. An Equalities Impact Assessment (EQIA) has been prepared on the basis of the consultation findings.¹

Financial effects

12. A Business and Regulatory Impact Assessment (BRIA) has also been published. While a number of the bodies raised concerns about a potential administrative burden – and consequent costs to their organisations – the evidence suggests the numbers of requests received by each of the bodies concerned would be small and therefore the impact of coverage should not lead to significant additional costs.

13. In response to concerns from a number of stakeholders, the Scottish Government has amended the proposed coming into force date from 1 April to 1 September 2016 to give authorities becoming subject to the legislation sufficient time to prepare for their new responsibilities.

Issues the Committee may wish to consider

14. The Delegated Powers and Law Reform Committee considered these Regulations at its meeting on 26 January 2016 and agreed that it had no comment to make.

Recommendation

15. Members are invited—

- To take evidence from the Minister of Parliamentary Business on the draft instrument (item 1); and then
- Debate and then consider motion S4M-15235 (item 2).

¹ Available at <http://www.gov.scot/About/Information/FOI/Coverage>

This draft Order supersedes the one laid before the Scottish Parliament on 12th January 2016 and published on 13th January 2016 (ISBN 9780111030547). It is being issued free of charge to all known recipients of that draft Order.

Draft Order laid before the Scottish Parliament under section 72(2)(b) of the Freedom of Information (Scotland) Act 2002, for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2016 No.

FREEDOM OF INFORMATION

**The Freedom of Information (Scotland) Act 2002 (Designation of
Persons as Scottish Public Authorities) Order 2016**

Made - - - -

Coming into force - -

The Scottish Ministers make the following Order in exercise of the powers conferred by section 5(1) of the Freedom of Information (Scotland) Act 2002⁽²⁾ and all other powers enabling them to do so.

In accordance with section 72(2)(b) of that Act a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

In accordance with section 5(5) of that Act they have consulted every person to whom the Order relates or persons appearing to them to represent such persons and such other persons as they considered appropriate.

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Freedom of Information (Scotland) Act 2002 (Designation of Persons as Scottish Public Authorities) Order 2016.

(2) This Order comes into force on 1st September 2016.

(3) In this Order, “the 2002 Act” means the Freedom of Information (Scotland) Act 2002.

Extension of coverage of the 2002 Act

2.—(1) The persons described in column 1 of the table in Schedule 1 to this Order are designated under section 5(2)(a) of the 2002 Act as a Scottish public authority in relation to the functions specified in column 2 of that table.

⁽²⁾ 2002 asp 13 as amended by the Freedom of Information (Amendment) (Scotland) Act 2013 (asp 2).

(2) The persons described in column 1 of the table in Schedule 2 to this Order who provide services under a contract to a Scottish public authority are designated under section 5(2)(b) of the 2002 Act as a Scottish public authority in relation to the services specified in column 2 of that table.

Name

Authorised to sign by the Scottish Ministers

St Andrew's House,
Edinburgh
Date

SCHEDULE 1

Article 2(1)

<i>Column 1</i> <i>Description of persons</i>	<i>Column 2</i> <i>Functions</i>
Grant-aided schools.	the running of a grant-aided school as defined in section 135(1) of the Education (Scotland) Act 1980.
Independent special schools listed in the Register of Independent Schools as set out in section 98 of the Education (Scotland) Act 1980 ⁽³⁾ and which fall within paragraph (a) of the definition of “special school” in section 29(1) of the Education (Additional Support for Learning) (Scotland) Act 2004 ⁽⁴⁾	the running of a special school as defined in section 29(1) of the Education (Additional Support for Learning) (Scotland) Act 2004.
Scottish Health Innovations Limited (registered number SC 236303).	promoting research and development within the National Health Service in Scotland.
Persons providing a “secure accommodation service” as defined in paragraph 6 of schedule 12 to the Public Services Reform (Scotland) Act 2010 ⁽⁵⁾ .	the provision of a secure accommodation service.

⁽³⁾ 1980 c.44.

⁽⁴⁾ 2004 asp 4.

⁽⁵⁾ 2010 asp 8.

SCHEDULE 2

Article 2(2)

<i>Column 1</i> <i>Description of persons</i>	<i>Column 2</i> <i>Services</i>
A person— (a) providing services under a contract with the Scottish Ministers for the running of a prison or part of a prison in Scotland; or (b) providing services under a subcontract to a contract of the type specified in (a) above.	In relation to persons specified under (a) of Column 1— the provision or running of a prison or a part of a prison in Scotland under section 106(1) of the Criminal Justice and Public Order Act 1994 ⁽⁶⁾ . In relation to persons specified under (b) of Column 1— the running of a prison or a part of a prison in Scotland under section 106(1) of the Criminal Justice and Public Order Act 1994.

⁽⁶⁾ 1994 c.33.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision for the extension of coverage of the Freedom of Information (Scotland) 2002 Act (“the 2002 Act”) under section 5 of that Act.

Section 5 of the 2002 Act enables the Scottish Ministers to designate as Scottish public authorities by order any person who is neither listed in schedule 1 to the 2002 Act (nor capable of being added to that schedule under section 4(1)), is neither a public body nor the holder of a public office, and who appears to the Scottish Ministers to exercise functions of a public nature or is providing, under contract to a Scottish public authority, any service whose provision is a function of that authority.

Article 2(1) designates grant-aided schools, independent special schools, providers of secure accommodation and Scottish Health Innovations Limited as Scottish public authorities for the purpose of the 2002 Act, being persons who appear to the Scottish Ministers to exercise a function or functions of a public nature under section 5(2)(a) of the 2002 Act in accordance with the descriptions set out in the table in Schedule 1.

Article 2(2) designates persons who provide, under a contract with Scottish Ministers, services relating to the provision and running of prisons, which by virtue of section 1 of the Prisons (Scotland) Act 1989 (c.45) is a function of Scottish Ministers. The table in the Schedule sets out the designated bodies with reference to the services being provided.

Local Government and Regeneration Committee

6th Meeting, 2016 (Session 4), Wednesday, 10 December 2016

Subordinate Legislation

Introduction

1. This paper seeks to inform members' consideration of the following statutory instruments (copies of the instruments are attached at Annexe A):

[Local Governance \(Scotland\) Act 2004 \(Remuneration\) Amendment Regulations 2016 \(SSI 2016/6\);](#)

[Scottish Local Government Elections Amendment Order 2016 \(SSI 2016/7\);](#)

[Representation of the People \(Absent Voting at Local Government Elections\) \(Scotland\) Amendment Regulations 2016 \(SSI 2016/8\);](#) and

[Local Government Pension Scheme \(Scotland\) Amendment Regulations 2016 \(SSI 2016/32\).](#)

Local Governance (Scotland) Act 2004 (Remuneration) Amendment Regulations 2016 (SSI 2016/6)

Background

2. The instrument was laid on 12 January 2016 and this Committee has been designated the lead committee. The lead committee must report on the instrument by 29 February 2016.

3. The above instrument is made by the Scottish Ministers in exercise of the powers conferred by sections 11 and 16(2) of the Local Governance (Scotland) Act 2004 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 provision in relation to the remuneration of local authority councillors. It amends the Local Governance (Scotland) Act 2004 (Remuneration) Regulations 2007 to increase the level of remuneration payable to local authority councillors by 1%, which increase will take effect from 1 April 2016.

Impact assessments

6. An equality impact assessment has not been undertaken as the increase in councillors' remuneration applies to all local authority members. The Scottish

Ministers have decided that a Business Regulatory Impact Assessment is not required as there is no impact on business or the third sector and the impact on the public sector (council budgets) is not expected to cause a significant financial pressure. The salary increase would be met from existing council budgets: it is estimated that for 2016-17 the cost would be around £324,000 across all 32 councils.

Issues the Committee may wish to consider

7. The Delegated Powers and Law Reform Committee considered these Regulations at its meeting on 19 January 2016 and agreed that it had no comment to make.

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

Scottish Local Government Elections Amendment Order 2016 (SSI 2016/7)

Background

9. The Scottish Local Government Elections Amendment Order 2016 is made in exercise of the powers conferred by sections 3(1) and 16(2)(a) of the Local Governance (Scotland) Act 2004. The Order is subject to negative procedure.

10. This Order makes provision as a consequence of the reduction of the voting age at local government elections to 16 affected by the Scottish Elections (Reduction of Voting Age) Act 2015. In addition it also makes minor changes in relation to the appointment of polling and count staff.

11. The policy note states that the changes in the Order are—

- Article 2(a) requires that the returning officer must not knowingly appoint polling staff who have been employed by, or on behalf of, a candidate in connection with the election. The appointment of such persons as polling staff has been prohibited for some time. The change is the addition of “knowingly”, which makes the provision consistent with provision for the May 2016 Scottish Parliament polls.
- Article 2(b) and (c) recognises that 16 and 17 year olds will attend polling stations as voters in their own right and applies the existing provisions relating to the requirement of secrecy and admission to polling stations that already apply to other voters.
- Article 2(d) and (f) allows 16 and 17 year olds to assist voters with disabilities and adapts the declaration that the person providing assistance must make.
- Article 2(e) requires that the returning officer must not knowingly appoint count staff who have been employed by, or on behalf of, a candidate in connection with the election. This brings local government provision into line with the provision for the May 2016 Scottish Parliament polls.
- Article 3 revokes provisions which no longer serve any practical purpose.

Impact assessments

12. This Order has no impact on the environment, equality, privacy or children's rights and therefore no Impact Assessments are required for those areas.

Business and Regulatory Impact Assessment (BRIA)

13. The Scottish Government does not consider that a BRIA is necessary as the policy changes will not lead to any new costs or savings for business, third or public sector organisations, regulators or consumers. There is no new additional cost on the public sector as the Scottish Government will meet the costs of associated activity and there is no transfer of costs or benefits from one group to another.

Issues the Committee may wish to consider

14. The Delegated Powers and Law Reform Committee considered these Regulations at its meeting on 19 January 2016 and agreed that it had no comment to make.

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

Representation of the People (Absent Voting at Local Government Elections) (Scotland) Amendment Regulations 2016 (SSI 2016/8)

Background

16. The Representation of the People (Absent Voting at Local Government Elections) (Scotland) Amendment Regulations 2016 are made in exercise of the powers conferred by section 20(1) of the Scottish Elections (Reduction of Voting Age) Act 2015. These Regulations are subject to negative procedure.

17. The Representation of the People (Absent Voting at Local Government Elections) (Scotland) Amendment Regulations 2016 amend the Representation of the People (Absent Voting at Local Government Elections) (Scotland) Regulations 2007 (SSI 2007/170).

18. The changes made in the Regulations are as follows:

- Regulation 2(a) reduces the age at which a person can attest an application for a proxy vote (by another person) to age 16.
- Regulation 2(b) and (c) makes provision to protect information relating to any young person that is held on absent voter records or lists, unless it is requested in relation to a forthcoming local government election at which the young person will be aged 16, and needed for the purposes of that election.

19. Article 2(a) requires that the returning officer must not knowingly appoint polling staff who have been employed by or on behalf of a candidate in connection with the election. The appointment of such persons as polling staff has been prohibited for some time. The change is the addition of "knowingly", which makes the provision consistent with provision for the May 2016 Scottish Parliament polls.

Consultation

20. The Electoral Management Board for Scotland and the Electoral Registration Committee of the Scottish Assessors Association were consulted during the

preparation of these draft Regulations. Neither of these bodies had any substantive comments.

Impact Assessment

21. These Regulations have no impact on the environment, equality, privacy or children's rights and therefore no Impact Assessments are required for those areas

Business Regularity Impact Assessment (BRIA)

22. The Scottish Government does not consider that that a BRIA is necessary as the policy changes will not lead to any new costs or savings for business, third or public sector organisations, regulators or consumers. There is no new additional cost on the public sector as the Scottish Government will meet the costs of associated activity and there is no transfer of costs or benefits from one group to another.

Issues the Committee may wish to consider

23. The Delegated Powers and Law Reform Committee considered these Regulations at its meeting on 19 January 2016 and agreed that it had no comment to make.

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

Local Government Pension Scheme (Scotland) Amendment Regulations 2016 (SSI 2016/32)

Background

25. The Scottish Ministers make the following Regulations in exercise of the power conferred by sections 1 and 12 of the Public Service Pensions Act 2013 (a) and all other powers enabling them to do so.

26. These Regulations make amendments to the Local Government Pension Scheme (Scotland) Regulations 2014 to cover the cost capping of employer contributions and the requirement to have a scheme actuary. The definition of "revaluation adjustment" has also been amended to specify the percentage as being the change in prices.

27. 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.

28. The objectives for the reform of the LGPS were to ensure the sustainability of the scheme by encouraging existing members to 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.

Consultation

29. A six week consultation with those stakeholders who administer the scheme was carried out but due to the highly technical nature of the amendments and

because no change of policy was involved, a formal consultation was not thought necessary.

Impact Assessment

30. 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.

Issues the Committee may wish to consider

31. The Delegated Powers and Law Reform Committee considered these Regulations at its meeting on 2 February 2016 and agreed it had no comment to make on this instrument.

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

**Steven Iserhoff
Committee Assistant**