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Delegated Powers and Law Reform Committee

Subordinate Legislation



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Delegated Powers and Law Reform Committee

The remit of the Delegated Powers and Law Reform Committee is to consider and report on—

- a. any—
 - i. subordinate legislation laid before the Parliament or requiring the consent of the Parliament under section 9 of the Public Bodies Act 2011;
 - ii. [deleted]
 - iii. pension or grants motion as described in Rule 8.11A.1; and, in particular, to determine whether the attention of the Parliament should be drawn to any of the matters mentioned in Rule 10.3.1;
- b. proposed powers to make subordinate legislation in particular Bills or other proposed legislation;
- c. general questions relating to powers to make subordinate legislation;
- d. whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation;
- e. any failure to lay an instrument in accordance with section 28(2), 30(2) or 31 of the 2010 Act; and
- f. proposed changes to the procedure to which subordinate legislation laid before the Parliament is subject.
- g. any Scottish Law Commission Bill as defined in Rule 9.17A.1; and
- h. any draft proposal for a Scottish Law Commission Bill as defined in that Rule.



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Introduction

1. At its meeting on 1 March 2016, the Committee agreed to draw the attention of the Parliament to the following instruments—
 - Police Pensions (Miscellaneous Amendments) (Scotland) Regulations 2016 (SSI 2016/75)
 - Country of Origin of Certain Meats (Scotland) Regulations 2016 (SSI 2016/84)
 - Act of Sederunt (Fees of Sheriff Officers) 2016 (SSI 2016/100)
 - Act of Sederunt (Fees of Messenger-at-Arms) 2016 (SSI 2016/101)
2. The Committee's recommendations in relation to the above instruments are set out below.
3. The Committee determined that it did not need to draw the Parliament's attention to the instruments which are set out at the end of this report.

Points raised: instruments subject to negative procedure

[Police Pensions \(Miscellaneous Amendments\) \(Scotland\) Regulations 2016 \(SSI 2016/75\) \(Justice\)](#)

4. The purpose of the Regulations is to make various amendments to existing instruments concerning police pensions in Scotland. The amendments are technical in nature.
5. The Regulations amended are: the Police Pensions Regulations 1987, the Police Pensions (Additional Voluntary Contributions) Regulations 1991, the Police (Injury Benefit) (Scotland) Regulations 2007, and the Police Pensions (Scotland) Regulations 2007. The instrument is subject to the negative procedure. It will come into force on 1 April 2016, with most of the provisions having effect retrospectively from dates ranging from 27 October 2008 to 1 October 2015.
6. The Committee sought explanation of two matters relating to the drafting of the Regulations. The correspondence is reproduced at Annexe A.
7. In relation to the lack of provision revoking regulation 3(4) of the Police Pensions (Additional Voluntary Contributions) Regulations 1991 following the substitution of regulation 11 by these Regulations, the Committee accepts that regulation 3(4) is of no continuing utility as it is concerned with retirements prior to 1 November 1999. The Committee also notes the Scottish Government's acknowledgement that regulation 3(4) should nonetheless have been revoked, and that the revocation will be effected in a future amending instrument.
8. **The Committee accordingly draws the instrument to the attention of the Parliament under the general reporting round, in respect that it contains a minor drafting error.**
9. **Regulation 18 of the instrument substitutes a new regulation 11 (retirement pensions) for existing regulation 11 of the Police Pensions (Additional Voluntary Contributions) Regulations 1991 ("the 1991 Regulations").**
10. **Regulation 3(4) of the 1991 Regulations provides that a pension election under regulation 11(2) made after retirement may be accepted only if the police authority are satisfied as mentioned in regulation 11(2). Prior to its substitution by this instrument, regulation 11(2) made provision for pension elections but no longer does so.**
11. **The Scottish Government acknowledges that regulation 3(4) of the 1991 Regulations ought to have been revoked in the context of regulation 11(2) being substituted by alternative provision in this instrument. It indicates that the revocation will be given effect in a future amending instrument.**

Country of Origin of Certain Meats (Scotland) Regulations 2016 (SSI 2016/84) (Health and Sport)

12. The main purpose of this instrument is to provide enforcement powers for certain provisions of Commission Implementing Regulation (EU) No. 1337/2013, with respect to the country of origin of certain meats.
13. These Regulations are subject to the negative procedure and come into force on 14 March 2016.
14. The Committee sought explanation of whether four definitions used in the Regulations were required, as set out in paragraph 17. The correspondence is reproduced at Annexe B.
15. The Scottish Government has acknowledged that the four definitions are not used elsewhere in the instrument, and so are redundant definitions. The Committee reports this matter, given that four definitions are not used in the short Regulations.
16. **The Committee draws the instrument to the Parliament’s attention under the general reporting ground in respect that the terms “batch”, “batch code”, “mass caterer” and “trimmings”, defined in regulation 2 (Interpretation), are superfluous as they are not used elsewhere within the short instrument, and should have been omitted.**
17. **The Committee notes that the Scottish Government has undertaken to amend the provision to remove those definitions at the next convenient legislative opportunity. The Committee accepts this approach to correction, in this instance.**

Act of Sederunt (Fees of Sheriff Officers) 2016 (SSI 2016/100) **(Justice)**

18. This instrument prescribes Sheriff Officers' fees.
19. In considering the instrument, the Committee sought explanation of two matters related to the preamble to the instrument. The correspondence is reproduced at Annexe C.
20. **The Committee draws the instrument to the Parliament's attention on the general reporting ground. The preamble to the instrument is incorrect and contains wording in square brackets which should have been removed prior to laying. The Committee considers that the inclusion of superfluous wording gives rise to a risk that the preamble may be misinterpreted, as it currently indicates that modifications were made to draft rules submitted to the Court of Session by the Scottish Civil Justice Council, when it appears that no such modifications were in fact made.**
21. **The Committee notes that the Lord President's Private Office has indicated that it has requested a correction slip from the Statutory Instrument Registrar to remove these words and the brackets surrounding them from the preamble.**

Act of Sederunt (Fees of Messengers-at-Arms) 2016 (SSI 2016/101) (Justice)

22. This instrument prescribes the fees of Messengers-at-Arms.
23. In considering the instrument, the Committee sought explanation of two matters related to the preamble to the instrument. The correspondence is reproduced at Annexe D.
24. **The Committee draws the instrument to the Parliament's attention under the general reporting ground. The preamble to the instrument is incorrect and contains wording in square brackets which should have been removed prior to laying. The Committee considers that the inclusion of superfluous wording gives rise to a risk that the preamble may be misinterpreted, as it currently indicates that modifications were made to draft rules submitted to the Court of Session by the Scottish Civil Justice Council, when it appears that no such modifications were in fact made.**
25. **The Committee notes that the Lord President's Private Office has indicated that it has requested a correction slip from the Statutory Instrument Registrar to remove these words and the brackets surrounding them from the preamble.**

No points raised

27. At its meeting on 1 March 2016 the Committee considered the following instruments. The Committee determined that it did not need to draw the attention of the Parliament to any of the instruments on any grounds within its remit:

Health and Sport

National Health Service Pension Scheme (Scotland) Amendment Regulations 2016 (SSI 2016/97);

National Health Service Superannuation Scheme (Miscellaneous Amendments) (Scotland) Regulations 2016 (SSI 2016/98);

National Health Service (Optical Charges and Payments) (Scotland) Amendment Regulations 2016 (SSI 2016/127).

Infrastructure and Capital Investment

Concession Contracts (Scotland) Amendment Regulations 2016 (SSI 2016/125).

Justice

Act of Adjournal (Criminal Procedure Rules 1996 Amendment) (Miscellaneous) 2016 (SSI 2016/103);

Human Trafficking and Exploitation (Scotland) Act 2015 (Commencement No. 1 and Transitory Provisions) Regulations 2016 (SSI 2016/128 (C.12)).

Local Government and Regeneration

Non-Domestic Rate (Scotland) Order 2016 (SSI 2016/113);

Non-Domestic Rates (Levy) (Scotland) Regulations 2016 (SSI 2016/114);

Non-Domestic Rates (Enterprise Areas) (Scotland) Regulations 2016 (SSI 2016/119);

Non-Domestic Rates (Steel Sites) (Scotland) Regulations 2016 (SSI 2016/120);

Non-Domestic Rates (Telecommunication Installations) (Scotland) Regulations 2016 (SSI 2016/122);

Non-Domestic Rates (Telecommunications and Canals) (Scotland) Amendment Order 2016 (SSI 2016/129).

Rural Affairs, Climate Change and Environment

Common Agricultural Policy (Direct Payments etc.) (Scotland) Amendment Regulations 2016 (SSI 2016/104);

Conservation of Salmon (Scotland) Regulations 2016 (SSI 2016/115);

Salmon Carcass Tagging (Scotland) Regulations 2016 (SSI 2016/116);

Tweed Regulation (Salmon Carcass Tagging) Order 2016 (SSI 2016/117);

Tweed Regulation (Salmon Conservation) Order 2016 (SSI 2016/118).

Annexe A

Police Pensions (Miscellaneous Amendments) (Scotland) Regulations 2016 (SSI 2016/75)

On 18 February 2016, the Scottish Government was asked:

Regulation 18 of the instrument substitutes regulation 11 (retirement pensions) in the Police Pensions (Additional Voluntary Contributions) Regulations 1991 (“the 1991 regulations”).

(a) Substituted regulation 11(1) of the 1991 regulations enables a participator to make certain arrangements for the payment of benefits with “an insurer”. Regulation 11(3) provides that “the approved additional voluntary contributions provider” must provide a participator with an option to receive benefits under paragraph (1)(a) to (c). There are various other references in regulation 11 to “the approved additional voluntary contributions provider”, and one further reference to “an insurer” (paragraph (12)).

“Approved additional voluntary contributions provider” is defined in regulation 2 of the 1991 regulations. Is “an insurer” intended to have any special meaning in regulation 11, and if so, is any definition required?

(b) Regulation 3(4) of the 1991 regulations provides that a pension election under regulation 11(2) made after retirement may be accepted only if the police authority are satisfied as mentioned in regulation 11(2). Substituted regulation 11(2) does not however make provision for pension elections. Does the Scottish Government consider that regulation 3(4) requires to be amended in consequence of the substitution of regulation 11, and if so, is any corrective action proposed?

The Scottish Government responded as follows:

(a) The word “insurer” is not intended to have any special meaning in regulation 11 and no definition was thought to be required. The word is used in a similar context in regulation 11 of the National Health Service Superannuation Scheme (Scotland) (Additional Voluntary Contributions) Regulations 1998 (S.I. 1998/1451) (as substituted by S.S.I. 2015/96) and similarly there is no definition of the word in those Regulations.

(b) We are grateful to the Committee for drawing attention to regulation 3(4) of the 1991 Regulations. That is not a provision of any continuing utility (being concerned with retirements prior to 1st November 1999). It should, however, have been revoked in the context of regulation 11 being substituted by these Regulations and this will be effected in a future amending instrument.

Annexe B

Country of Origin of Certain Meats (Scotland) Regulations 2016 (SSI 2016/84)

On 18 February 2016, the Scottish Government was asked:

In relation to this instrument, can you please explain why the terms “batch”, “batch code”, “mass caterer”, and “trimmings” which are the subject of definition within regulation 2 (Interpretation) are not referred to elsewhere in this short instrument. Further,

Are these defined terms superfluous, or is there any intention to use any of them in the operative provisions of the instrument?

(b) Would any corrective action be proposed to remove the definitions (if they are superfluous)?

The Scottish Government responded as follows:

We thank the Committee for drawing these matters to our attention.

In the course of the drafting process of the Instrument, the inclusion of the above terms became superfluous. It is accepted by the Scottish Government that they serve no purpose. Whilst they have no effect, they will be removed at the next convenient legislative opportunity.

Annexe C

Act of Sederunt (Fees of Sheriff Officers) 2016 (SSI 2016/100)

On 18 February 2016, the Lord President’s Private Office was asked:

In the preamble, the words “with such modifications as it thinks appropriate” appear in square brackets. Are these brackets included in error, or is it intended that the words within them should be omitted?

The preamble cites section 106(1) of the 2014 Act as the enabling power under which the instrument is made. Paragraph 3 of the instrument makes a savings provision, which does not appear to be enabled by section 106(1), but rather by section 106(3). Is it considered that the preamble should also cite section 106(3) as an enabling power? If so, what is the effect of omitting to cite that provision considered to be?

The Lord President’s Private Office responded as follows:

Question 1

The square brackets and the words within them should be omitted. This part of the preamble was included in error. The Lord President’s Private Office identified this error shortly after the instrument was laid. As the preamble is an unamendable part of the instrument, we have requested a correction slip from the SI Registrar to resolve the matter.

Question 2

In our view, section 106(3) of the Courts Reform (Scotland) Act 2014 provides that an act of sederunt under subsection (1) may, among other things, make saving provisions. We consider that this is an extension of the power in section 106(1) rather than constituting a separate power. It is not the usual practice of this office to cite provisions which extend principal powers and we do not believe it to be the usual practice of the Scottish Ministers either.

However, if our view is incorrect then we observe that we have referred in the preamble to “all other powers enabling [the Court] to do so”. We consider that this would be sufficient to include section 106(3), particularly under reference to the judgment of the Court of Appeal of England and Wales in *Vibixa Ltd v Komori UK Ltd and others* [2006] EWCA Civ 536. In our view, the operative provisions of the instrument make it clear that the Court must have invoked section 106(3), as paragraph 3 contains a saving provision. Accordingly, we would rely on the inclusion of those words if our principal submission is not accepted.

Annexe D

Act of Sederunt (Fees of Messengers-at-Arms) 2016 (SSI 2016/101)

In the preamble, the words “with such modifications as it thinks appropriate” appear in square brackets. Are these brackets included in error, or is it intended that the words within them should be omitted?

The preamble cites section 105(1) of the 2014 Act as the enabling power under which the instrument is made. Paragraph 3 of the instrument makes a savings provision, which does not appear to be enabled by section 105(1), but rather by section 105(3). Is it considered that the preamble should also cite section 105(3) as an enabling power? If so, what is the effect of not citing that provision considered to be?

The Lord President’s Private Office responded as follows:

Question 1

The square brackets and the words within them should be omitted. This part of the preamble was included in error. The Lord President’s Private Office identified this error shortly after the instrument was laid. As the preamble is an unamendable part of the instrument, we have requested a correction slip from the SI Registrar to resolve the matter.

Question 2

In our view, section 105(3) of the Courts Reform (Scotland) Act 2014 provides that an act of sederunt under subsection (1) may, among other things, make saving provisions. We consider that this is an extension of the power in section 105(1) rather than constituting a separate power. It is not the usual practice of this office to cite provisions which extend principal powers and we do not believe it to be the usual practice of the Scottish Ministers either.

However, if our view is incorrect then we observe that we have referred in the preamble to “all other powers enabling [the Court] to do so”. We consider that this would be sufficient to include section 105(3), particularly under reference to the judgment of the Court of Appeal of England and Wales in *Vibixa Ltd v Komori UK Ltd and others* [2006] EWCA Civ 536. In our view, the operative provisions of the instrument make it clear that the Court must have invoked section 105(3), as paragraph 3 contains a saving provision. Accordingly, we would rely on the inclusion of those words if our principal submission is not accepted.

