



The Scottish Parliament  
Pàrlamaid na h-Alba

# **Subordinate Legislation Committee**

## **17th Report, 2013 (Session 4)**

### **Subordinate Legislation**

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Pàrlamaid na h-Alba

## **Subordinate Legislation Committee**

### **Remit and membership**

#### **Remit:**

The remit of the Subordinate Legislation Committee is to consider and report on—

- (a)
  - (i) subordinate legislation laid before the Parliament;
  - (ii) any Scottish Statutory Instrument not laid before the Parliament but classed as general according to its subject matter;

and, in particular, to determine whether the attention of 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;

*(Standing Orders of the Scottish Parliament, Rule 6.11)*

#### **Membership:**

Nigel Don (Convener)  
Jim Eadie  
Mike MacKenzie  
Hanzala Malik  
John Pentland  
John Scott  
Stewart Stevenson (Deputy Convener)

#### **Committee Clerking Team:**

**Clerk to the Committee**  
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**Subordinate Legislation Committee**

**17th Report, 2013 (Session 4)**

**Subordinate Legislation**

The Committee reports to the Parliament as follows—

1. At its meeting on 5 March 2013, the Committee agreed to draw the attention of the Parliament to the following instruments—

Renewables Obligation (Scotland) Amendment Order 2013 [draft]

Police Service of Scotland (Police Cadets) Regulations 2013 (SSI 2013/42)

National Health Service (Scotland) (Injury Benefits) Amendment Regulations 2013 (SSI 2013/52)

2. The Committee's recommendations in relation to the instruments are set out below.
3. The instruments that the Committee determined that it did not need to draw the Parliament's attention to are set out at the end of this report.

## **POINTS RAISED: INSTRUMENTS SUBJECT TO AFFIRMATIVE PROCEDURE**

### **Renewables Obligation (Scotland) Amendment Order 2013 [draft] (*Economy, Energy and Tourism Committee*)**

1. The Renewables Obligation (Scotland) Order was first made in 2002, under powers in the Electricity Act 1989 which were executively devolved (as regards Scotland) to the Scottish Ministers. The Order imposes an obligation on electricity suppliers to provide an increasing percentage of their supply to customers in Scotland from qualifying renewable energy sources. The principal Order is now the 2009 Order.

2. This amending Order introduces 2 changes. The first is a restriction on the support for electricity generated by certain types of wood fuelled biomass station. Article 7 introduces a new article 22C to the 2009 Order. Its general effect is that wood fuelled biomass stations with an installed capacity greater than 15 megawatts will not receive any Renewables Obligation Certificates (“ROCs”) for their electricity, unless those stations are accredited under the Combined Heat and Power Quality Assurance scheme.

3. The Order also substitutes a new definition of microgenerator, to exclude enhanced wave and tidal stream generators. This will enable such generators, with a capacity of 50 kW or less, to remain eligible for the higher “ROC” bands for such generation, which are introduced by article 18 of the Order.

4. The remaining changes are consistent with those being introduced across the UK. (These are summarised in paragraph 9 of the Policy Note).

5. The Order is subject to the affirmative procedure. Subject to approval, it will come into force on 1 April 2013.

6. In considering the instrument, the Committee asked the Scottish Government for clarification of certain points. The correspondence is reproduced in Appendix 1.

7. The Committee reports a minor drafting error in article 7, as explained in the following paragraph. The general effect of article 7 is explained above.

**8. The Committee draws the Order to the attention of the Parliament on the general reporting ground in relation to a minor drafting error. There is an error in article 7, which inserts new article 22C of the principal 2009 Order, in relation to electricity generated by certain types of biomass station. The new article 22C(2) refers incorrectly in 2 places to “qualifying combined heat and power station”. The correct definition, in article 2 of the principal Order, is “qualifying combined heat and power *generating* station”.**

**9. The Committee notes that the Scottish Government has undertaken to amend the error at the next available opportunity.**

**POINTS RAISED: INSTRUMENTS SUBJECT TO NEGATIVE PROCEDURE**

**Police Service of Scotland (Police Cadets) Regulations 2013 (SSI 2013/42)**  
*(Justice Committee)*

10. This instrument revokes and saves the Police (Cadets) (Scotland) Regulations 1968 (“the 1968 Regulations”), together with 13 amending instruments which are similarly revoked and saved. It revokes a further 13 instruments which amended the 1968 Regulations, those amendments now being spent.

11. The 1968 Regulations are also made subject to a number of modifications set out in paragraph (3) of article 2, and paragraphs (4) to (11) make, in effect, transitional provision as to the contracts of employment of police cadets.

12. The regulations are subject to the negative procedure and are due to come into force on 1 April 2013.

13. In considering the instrument, the Committee raised certain matters with the Scottish Government. The correspondence is reproduced in Appendix 2.

14. Paragraph 1 of Part 3 of the Schedule to the instrument refers to “The Police (Minimum Age for Appointment) Regulations 2006” (“the English Regulations”). There is a footnote reference indicating that the instrument in question is SSI 2006/552. However, SSI 2006/552 is in fact the Police (Minimum Age for Appointment) (Scotland) Regulations 2006 (“the Scottish Regulations”). The Scottish Ministers have confirmed that this is a typographical error and that their intention was to make provision revoking and partially saving the Scottish Regulations.

15. The Scottish Government considers that the error is unlikely to be problematic in practice and proposes to correct this matter either by correction slip or in a future instrument. The Committee considers that as this is an error affecting the substance of the instrument and given its concerns as to the accessibility of the 1968 Regulations discussed below, a corrective instrument would provide better transparency for cadets affected by the regulations.

16. Separately, the Committee notes that the effect of this instrument is not to make fresh provision about the terms and conditions of service of police cadets. Instead, it prolongs the existence of the 1968 Regulations as amended, subject to the further modifications made by this instrument.

17. However, ascertaining the content of the 1968 Regulations is extremely difficult. To the best of the Committee’s knowledge, they are not available in a consolidated form, commercially or otherwise (save as mentioned below). Access to the original unamended text of the 1968 Regulations is not freely available to the public, although copies can be obtained from commercial resources or (in hard copy) from law libraries. Indeed, the Committee’s scrutiny of this instrument (particularly the modifications in article 2(3)) has been dependent upon the

Scottish Ministers sharing an unofficial consolidation which they had prepared for their own purposes.

18. It is accordingly unusually difficult to ascertain what provision the 1968 Regulations make. The Scottish Government accepts that other approaches were open to them, and that in particular they might have restated the 1968 Regulations (i.e. consolidated them) or have drafted entirely new terms and conditions. The Government points, however, to the fact that they understand there only to be 19 police cadets remaining in Scotland, with no intention to appoint any further cadets when those appointments come to an end. This fact appears to have been given substantial weight when deciding what approach to take. The Scottish Government goes on to say that either a consolidation or new provision would have given the impression that the Police Service of Scotland might appoint new police cadets after 1 April 2013, and that their stakeholders had neither asked for nor wanted such provision to be made.

19. The Committee considers that there is some force in the Scottish Government's argument, so far as it relates to formulating entirely new terms and conditions of service for police cadets. However, it is not convinced that there is any particular merit in the argument so far as it relates to a consolidation of the 1968 Regulations. Nor is it persuaded by the argument that these Regulations are essentially personal to the police cadets themselves, rather than being of wider application. In 1967 and in 2013, the UK Parliament and the Scottish Parliament respectively decided that the terms and conditions of service for police constables and police cadets should be set out in subordinate legislation which is subject to the negative procedure. In that respect, these instruments form part of the law of Scotland and the Committee can see no justification for saying that the lack of accessibility is excusable simply because it will affect only a small number of people.

20. The Committee observes that the Scottish Ministers will now ask the Scottish Police Authority to provide a consolidated copy of the 1968 Regulations to each of the remaining police cadets. In practical terms, this may help to ensure that the police cadets are aware of their terms and conditions of service. However, it appears to the Committee to be somewhat undesirable that understanding the effect of this instrument is dependent upon obtaining access to an unofficial and unpublished consolidation of the 1968 Regulations.

**21. The Committee draws the instrument to the attention of the Parliament on reporting ground (i). Paragraph 1 of Part 3 of the Schedule to the instrument appears to be defectively drafted, in that it refers to the Police (Minimum Age for Appointment) Regulations 2006 (a statutory instrument which applies to England and Wales) rather than referring to the Police (Minimum Age for Appointment) (Scotland) Regulations 2006 as was apparently the Scottish Ministers' intention.**

**22. The Committee recommends that the Scottish Ministers lay an amending instrument to address this defect at the first available opportunity.**

**23. The Committee draws the instrument to the attention of the Parliament on the general reporting ground. This instrument saves and continues in effect the Police (Cadets) (Scotland) Regulations 1968 together with 13 relevant amending instruments. Article 2(3) of this instrument further modifies the 1968 Regulations. It is accordingly extremely difficult to ascertain the terms and conditions of service of police cadets as the Police (Cadets) (Scotland) Regulations 1968 have been amended extensively, are not available in an as-amended form (save in an unofficial consolidation prepared by the Scottish Ministers), and are not freely available in electronic form even in their original and unamended form.**

**24. The Committee notes the Scottish Ministers' intention to request that the Scottish Police Authority provide a consolidated form of the 1968 Regulations to each of the police cadets transferring to the Police Service of Scotland.**

**25. The Committee considers that it would have been preferable, in the interests of accessibility of the subordinate legislation made under the Police and Fire Reform (Scotland) Act 2012, had the Scottish Ministers simply consolidated the 1968 Regulations rather than relying upon the saving provisions of this instrument coupled with the existence of an unofficial and unpublished consolidation document.**

**National Health Service (Scotland) (Injury Benefits) Amendment Regulations 2013 (SSI 2013/52)** *(Health and Sport Committee)*

26. The Regulations make changes to the NHS Injury Benefit scheme set out in the National Health Service (Scotland) (Injury Benefits) Regulations 1998. The changes arise from a review conducted because of concerns that the current arrangements were no longer fit for purpose and were difficult to replicate outside the traditional NHS organisations. Current arrangements for injury benefit allow for payments for life which can be very costly.

27. The current scheme is being restricted to NHS work-related injuries sustained and NHS work-related diseases contracted before 31 March 2013. Entitlement to injury allowance in respect of such injuries sustained or diseases contracted on or after that date is to be set out in a revision to the NHS Terms and Conditions of Service Handbook as part of the terms and conditions of employment of NHS staff. They will therefore no longer be subject to parliamentary scrutiny.

28. The Regulations are subject to the negative procedure and will come into force on 31 March 2013.

29. In considering the instrument, the Committee asked the Scottish Government for clarification of certain points. The correspondence is reproduced in Appendix 3.

30. New regulation 18B sets out procedural requirements for a claim for benefit. Regulation 18B(1) provides that claims are to be made in such form and within such period as the Scottish Ministers specify. The Committee asked the Scottish Government to explain in what manner these requirements would be specified and how this would be notified to claimants. The Scottish Government was also asked why it was appropriate for the Ministers to exercise this function other than through making regulations when the parent Act anticipates that requirements which must be fulfilled by persons for them to be entitled to benefit payments will be set out in the regulations.

31. The Scottish Government considers that it is expedient to specify the form and period for applications because these are administrative matters which may be subject to regular revision. Any material change to either will be published in advance and notified to NHS staff. The Scottish Government explains that these requirements will be set out in guidance and a signpost to the guidance will be set out in the NHS Handbook.

32. The Committee accepts that the specification of the form of an application might properly be considered an administrative matter and that the form or the method of its transmission may be subject to change as technology improves or in light of the experience of considering applications. The Committee also accepts that the parent Act permits the delegation of functions.

33. However, the Committee does not consider that the time for submission of claims is properly considered to be an administrative matter. Time limits have (or

can have) an impact on the substance of the right itself or to the period in respect of which an allowance becomes payable. The Committee considers that matters of substance should properly be set out in regulations rather than being left to guidance. The former is subject to parliamentary control whereas the latter is not.

**34. The Committee draws the instrument to the attention of the Parliament on reporting ground (g) as the instrument has been made by what appears to be an unusual or unexpected use of the powers conferred by the parent statute.**

**35. New regulation 18B(1) delegates power to the Scottish Ministers to specify the period within which a claim for injury benefit must be made in order for entitlement to benefit to arise. This permits the specification of a substantive matter other than by subordinate legislation and therefore without any scrutiny by the Parliament. While the Superannuation Act 1972 permits the delegation of functions, the Committee considers that it is unusual for substantive requirements to be delegated in this manner. The Committee notes that this approach is inconsistent with new regulations 18A(2) and 21A(1) which set out substantive time limits within the regulations.**

36. The Committee is concerned whether the reference in new regulation 4(11) to the NHS Terms and Conditions of Service Handbook is sufficiently clear to provide certainty and to avoid confusion. The Handbook is referred to as the source of the meaning of the expression “injury allowance” for the purposes of the regulations.

37. The Committee notes that the edition of the Handbook to which the Government wishes to refer was not in existence at the time the regulations were laid before the Parliament for scrutiny but were in the course of being ratified by the NHS Staff Council. There is no reference in the regulations to the place where the Handbook can be found or from whom copies of the Handbook can be obtained – presumably because it was not possible to do so in advance of the edition being agreed. It is also not clear from the regulations who is responsible for its publication. The Committee considers that this could be clearer and that this falls short of the Government’s recognised standard of best practice for references to external documents.

**38. The Committee draws the instrument to the attention of the Parliament on ground (h) as the meaning of “injury allowance” in new regulation 4(11) could be clearer since the NHS Terms and Conditions of Service Handbook by which this term is defined is not fully identified by reference to the source of the material and where copies of it can be consulted.**

**39. The Committee also notes that the edition of the Handbook to which the Scottish Ministers intend to refer was not in existence at the time when the instrument was made nor when it was scrutinised by the Committee. It was therefore not possible for the Committee to discharge its scrutiny function as it would have wished.**

**40. The Committee therefore draws the attention of the lead committee to the fact that the terms and conditions affecting entitlement to injury allowance in respect of work related injury or disease sustained or contracted after 31 March 2013 (which have been removed from the current statutory scheme) were neither defined nor published at the time the instrument was laid.**

41. The Scottish Government has confirmed that regulation 18B(3) does not read as intended. Instead of “that person” it should have referred to “the person making the claim”. The Government has undertaken to amend this provision when the principal regulations are next amended. In the meantime the Government considers that the position is sufficiently clear that the person referred to is the person making a claim and not any other person.

**42. The Committee reports the instrument under the general reporting ground as regulation 18B(3) contains the following minor drafting error. Instead of “that person” regulation 18B(3) should have referred to “the person making the claim”. The Government has undertaken to correct this provision when the principal regulations are next amended. The Committee is not clear when this will occur given that the effect of the Regulations is to close the scheme in respect of injuries or disease sustained or contracted after 31 March 2013. The Committee therefore recommends that the Government considers correcting this error in early course.**

**NO POINTS RAISED**

43. At its meeting on 5 March 2013, the Committee considered the following instruments and determined that it did not need to draw the attention of the Parliament to any of the instruments on any grounds within its remit:

***Economy, Energy and Tourism***

Electricity (Applications for Consent) Amendment (Scotland) Regulations 2013 (SSI 2013/58)

Fees in the Registers of Scotland (Consequential Provisions) Amendment Order 2013 (SSI 2013/59)

***Justice***

Police Investigations and Review Commissioner (Investigations Procedure, Serious Incidents and Specified Weapons) Regulations 2013 [draft];

Police and Fire Reform (Scotland) Act 2012 (Consequential Modifications and Savings) Order 2013 [draft]

Police Service of Scotland (Conduct) Regulations 2013 (SSI 2013/60)

Police Service of Scotland (Senior Officers) (Conduct) Regulations 2013 (SSI 2013/62)

**Parliament**

Local Government Finance (Scotland) Amendment Order 2013 [draft]

**Welfare Reform**

Education (School Lunches) (Scotland) Amendment Regulations 2013 (SSI 2013/64)

## APPENDIX 1

### Renewables Obligation (Scotland) Amendment Order 2013 [draft]

On 22 February 2013, the Scottish Government was asked:

1. In relation to the new article 22C of the principal 2009 Order, as inserted by article 7:

(a) Please clarify whether the provisions in subparagraphs (2)(a) and (b) must both apply as conditions, before no “SROCs” are to be issued by a generating station to which the article applies, or whether these conditions are alternatives. Would this be made clearer by adding “and” or “or” as the case may be at the end of subparagraph (a)?

(b) Is there an error in paragraph (2) as the defined term in the 2009 Order is a “qualifying combined heat and power generating station”, but “generating” is omitted in 2 places?

(c) Article 3 substitutes a definition of “energy crops” for “energy crop” in the principal Order (which definition is used elsewhere in this instrument), but paragraph (3) of article 22C retains the reference to “energy crop”. Was it intended that the definition in article 3 would be kept in the singular, because that definition lists alternative types of crop, and that would accord with 22C(3)?

(d) If you would propose to amend any of these points, then by what means?

2. Article 3(a)(ix) provides for ambulatory references to Annex 5 to the “Renewables Directive” 2009/28/EC, in article 54A and Schedule A1 to the principal 2009 Order. However the second paragraph of the preamble narrates the intention to make the ambulatory reference in article 54A alone. Further, while article 23 amends that article 54A in implement of Commission Decision 2011/13/EU and so for a purpose mentioned in section 2(2) of the 1972 Act, Schedule A1 to the principal Order contains various existing references to Annex 5 which are otherwise not affected by this Order.

(a) Please clarify whether it is intended (as article 3(a)(ix) provides) to make an ambulatory reference in respect of all of the references to Annex 5 contained in *Schedule A1* to the principal Order?

(b) If so, please clarify how those ambulatory references are made within the powers in paragraph 1A of schedule 2 to the European Communities Act 1972, and how provision is made for a purpose mentioned in section 2(2) in that respect.

(c) If it is intended to make those references in relation to Schedule A1, is there an omission in paragraph 2 of the preamble?

**The Scottish Government responded as follows:**

1. In relation to the new article 22C of the principal 2009 Order, as inserted by article 7:

(a) It is not the case that the provisions in sub-paragraphs (2)(a) and (b) must both apply as conditions. The Government considers that the provision is clear. The effect of paragraph 2(a) is that no “SROCs” are to be issued in respect of electricity generated by a generating station to which the article applies unless the generating station is a qualifying combined heat and power generating station. The effect of paragraph (2)(b) is that no SROCs are to be issued in respect of electricity generated by such a generating station if the generating station has not been a qualifying combined heat and power generating station during the whole or part of 5 or more obligation periods.

(b) The Scottish Government acknowledge that the word “generating” does not appear in paragraph (2)(a) or (b) of new article 22C and are grateful to the Committee for drawing this to their attention. The Scottish Government, however, do not consider that in the context any doubt arises from the omission of the word. It is clear that both paragraphs (a) and (b) are referring to generating stations and that the reference to a “qualifying combined heat and power station” is a reference to a qualifying combined heat and power generating station falling within the definition of article 2(1) of the principal 2009 Order. The Scottish Government will seek to insert the word “generating” at the next available opportunity.

(c) Article 22C(3) defines “relevant biomass” as biomass which is composed wholly or partly from wood which is not an energy crop. This clearly refers to wood which is not one of the energy crops listed in article 3. The Scottish Government do not think there is any ambiguity in the provision.

2. The Scottish Government is grateful to the Committee for raising this matter.

(a) The intention is to make an ambulatory reference in respect of all the references to Annex 5 contained in Schedule A1 to the principal 2009 Order.

(b) The amendments made by article 23 to article 54A of the principal 2009 Order implement Commission Decision 2011/13/EU on certain types of biofuels and bioliquids to be submitted by economic operators to Member States. The Commission Decision was made under the third paragraph of article 18(3) of Directive 2009/28/EC of the European Parliament and of the Council on the promotion of the use of energy from renewable sources (“the Renewables Directive”). Article 23 accordingly makes provision for a purpose mentioned in section 2(2) of the European Communities Act 1972. As amended by article 23, article 54A(8) of the principal 2009 Order will include references to Annex 5 of the Renewables Directive. Article 54A(8) will also include definitions of “actual value method” and “mixed value method” which rely on definitions set out in Schedule 1A to the principal 2009 Order. Schedule A1 defines those terms by reference to Annex 5 of the Renewables Directive. Article 3(a)(ix) of the draft Order accordingly is made within the powers in paragraph 1A of Schedule 2 to the European Communities Act 1972.

(c) The Scottish Government agrees that there is an omission in paragraph 2 of the preamble. It regrets this but considers that it has no legal effect in the circumstances. The enabling power, paragraph 1A of Schedule 2 to the European Communities Act 1972 is cited in the preamble and as necessary, the ambulatory reference is made expressly in the instrument itself in article 3.

## **APPENDIX 2**

### **Police Service of Scotland (Police Cadets) Regulations 2013 (SSI 2013/42)**

#### **On 22 February 2013, the Scottish Government was asked:**

1. The effect of this instrument appears to be to revoke and then save the Police Cadets (Scotland) Regulations 1968 (“the 1968 Regulations”). In addition to that instrument, this entails the revocation and saving of 12 separate amending instruments, as well as the revocation of a further 13 amending instruments which we understand to be spent. In addition to this, the 1968 Regulations as so revoked and saved are further textually amended by the provisions of regulation 2(3). We observe that the 1968 Regulations are not available in consolidated form, to the best of our knowledge, either publicly or through commercial resources available to us. It is also difficult to obtain a copy of the original 1968 Regulations. Given these points, and given that the 1968 Regulations as revoked and saved will continue to constitute the terms and conditions of service for police cadets in Scotland, the Scottish Government is asked to explain

- a. why they did not consider it appropriate to consolidate the 1968 Regulations, rather than preserving them in this fashion;
- b. why it considers that the effect of this instrument (which, in effect, preserves the 1968 Regulations rather than making substantive provision) is sufficiently clear, particularly to those whose terms and conditions are regulated in this way; and
- c. whether it proposes to take any steps so as to make the terms and conditions of service more easily available to police cadets.

2. Regulation 2(2) provides that “...the Regulations mentioned in Part 2 and, so far as provided there, in Part 3 of the Schedule continue to have effect on and after 1 April 2013...”. The heading to Part 3 of the Schedule reads “Instrument revoked with partial saving”, and paragraph 1 of that Part states “The Police (Minimum Age for Appointment) Regulations 2006 so far as they amend the Police Cadets (Scotland) Regulations 1968”. Should that reference in paragraph 1 of Part 3 properly be to the Police (Minimum Age for Appointment) (Scotland) Regulations 2006 (“the 2006 Regulations”)? If so, how does the Scottish Government propose to correct this?

3. The Scottish Government is further asked to explain what the effect of Part 3 of the Schedule, as read with regulation 2(2), is supposed to be. Standing the revocation of regulation 2 of the 2006 Regulations by paragraph 20 of Schedule 3 to the Police Service of Scotland Regulations 2013 on 1 April 2013, the only substantive provision of the 2006 Regulations which will remain is regulation 3 (which amends the 1968 Regulations). If the intended effect of this provision is to save regulation 3 of the 2006 Regulations as it applies to the 1968 Regulations, why is it considered that regulation 2(2) and Part 3 of the Schedule achieve this

effect? If they are considered to achieve that effect, does the Scottish Government consider that this is sufficiently clear, and why?

**The Scottish Government responded as follows:**

1a, b and c. The position with regards to police cadets is unique and the Scottish Government has therefore had to adopt a unique approach. The police cadets regime has previously been an access route to becoming a constable of a police force. To qualify for appointment as a cadet a chief constable has to be satisfied that the individual is likely, on attaining the age of 18 years, to be able to satisfy the qualification requirements for appointment to a police force. That test is an onerous one for an individual of 16 or 17 years of age to satisfy. In recent years the police cadet access route has fallen into general disuse and most constables are nowadays recruited via other access routes. We understand there are currently only 19 police cadets in Scotland, employed by Grampian Joint Police Board; other police authorities have stopped recruiting police cadets. The Police Service of Scotland and ACPOS have indicated that they do not currently intend recruiting new police cadets once the current cadets' contracts come to an end. Those contracts are expressly stated to be subject to the 1968 Regulations.

The Scottish Government then faced the issue of whether to draft fresh police cadet regulations, re-state the current ones or save the current ones with modifications to reflect the Police and Fire Reform (Scotland) Act 2012. Drafting fresh police cadet regulations or re-stating them was not considered appropriate because the new Police Service does not presently wish to recruit any police cadets after 1 April 2013 and the Scottish Government would have effectively been imposing a set of regulations on stakeholders which they had neither asked for nor wanted and which would give the misleading impression that new police cadets were likely to be appointed after 1 April 2013.

Instead, consistent with the policy context of finite ongoing existence of a very small number of police cadets, the Scottish Government chose to retain the current regulations with limited modifications so that those few individuals who are currently employed as police cadets may continue on the terms and conditions with which they have been appointed – and are therefore familiar – until the natural end of their appointment. Thereafter there will be nobody subject to the 1968 Regulations and in due course they will be swept away.

It is worth noting that the terms of the Regulations are part of the personal terms and conditions of employment and as such are of interest primarily to the individual employees themselves rather than being legislation of general effect bearing on the populace at large. As those individual employees are already subject to the 1968 Regulations in their unconsolidated form we do not think there is any prejudice caused by saving them with minor modifications that ensure they can continue to be employed by the Scottish Police Authority consistent with their written terms and conditions of employment as issued by their current employer. In light of the Committee's concerns we will ask the Scottish Police Authority to provide a consolidated form of the 1968 Regulations to each of the police cadets transferred by the 2012 Act.

2. The Scottish Government thanks the Committee for identifying the typographical error in paragraph 1 of Part 3 of the Schedule to the Regulations. As the footnote makes clear, the reference to the Police (Minimum Age for Appointment) Regulations 2006 should be to the Police (Minimum Age for Appointment) (Scotland) Regulations 2006. The footnote refers to SSI 2006/552 which is so titled. While the error is regrettable we do not think a court would have much difficulty ascertaining the correct intention here because: (a) the footnote directs the reader to the more fully named instrument; and (b) the instrument bearing that name is S.I. 2006/2278 and applies to England and Wales only so it would be out-with competence for the Scottish Parliament to revoke it. We will endeavour to have the instrument corrected by correction note, which failing we will correct the title in the next available instrument.

3. Regulation 2(1) of the Regulations provides that Regulations mentioned in the Schedule are revoked, so far as not already revoked. The Police (Minimum Age for Appointment) (Scotland) Regulations 2006 are mentioned in Part 3 of the Schedule. They are therefore revoked (to the extent not already done so by the Police Service of Scotland Regulations 2013). Regulation 2(2) then says that the Regulations mentioned in Part 3, so far as provided in that Part, continue to have effect. Part 3 provides so far as they amend the Police Cadets (Scotland) Regulations 1968. Taken together, the effect is that the 2006 Regulations are saved to the extent that they amend the 1968 Regulations. The drafting may be concise but we consider the effect clear when one takes the verbs and applies them to the provisions of the Schedule in turn: for regulation 2(1), what is mentioned in the Schedule? In Part 3 it is the 2006 Regulations. For regulation 2(2), what is mentioned is the 2006 Regulations; what is “so far as” provided, is the “so far as they amend the Police Cadets (Scotland) Regulations 1968”. There is no other thing provided in Part 3. The heading to Part 3 of the Schedule dispels any doubt as to what is intended: the instrument is revoked subject to the saving provided.

## **APPENDIX 3**

### **National Health Service (Scotland) (Injury Benefits) Amendment Regulations 2013 (SSI 2013/52)**

**On 19 February 2013, the Scottish Government was asked:**

1. In new regulation 4(11) of the National Health Service (Scotland) (Injury Benefits) Regulations 1998 “the NHS Terms and Conditions of Service Handbook” is referred to for the purposes of the meaning of “injury allowance” without further specification of that document and no indication as to where copies of that document may be obtained. This Handbook requires to be consulted in order to calculate a person’s entitlement to benefits under the 1998 Regulations by virtue of regulation 4(6).

The Scottish Government is asked to explain:

- which edition of the Handbook is being referred to;
- the meaning of “injury allowance” and how that is calculated (the current Handbook of this name available online does not appear to make reference to injury allowance);
- whether it is intended that this reference to the Handbook is to be ambulatory and if so whether it achieves this effect;
- where a copy of the Handbook can be obtained; and
- whether the provision made in new regulation 4(11) concerning the Handbook is sufficiently clear without this information.

2. In new regulation 18B(1) of the 1998 regulations a claim for benefit must be made in such form and within such period as the Scottish Ministers may specify. In what manner will these requirements be specified and how will this be notified to persons entitled to benefits under the 1998 regulations? If this function is not to be exercised by subordinate legislation why is it considered appropriate to confer this function on Ministers to exercise by other means since the power in section 10 of the Superannuation Act 1972 anticipates that the requirements that must be fulfilled by persons for them to be entitled to payment under the regulations will be prescribed in the regulations themselves?

3. In new regulation 18B(3) to whom does the expression “that person” refer given that no person other than the Scottish Ministers has been referred to in the regulation. If it is intended only to refer to the applicant is this sufficiently clear? This would appear to be material to identifying the scope of medical information which the Scottish Ministers can require to be produced.

4. In new regulation 21A(1)(b) in what form is the information requested by the Scottish Ministers to be provided? Sub-paragraphs (a) and (c) refer to information being provided in writing whereas sub-paragraph (b) does not. As entitlement to benefits may be lost if the information is not provided within the time limit specified, is it considered to be sufficiently clear how persons are to comply with this requirement?

**The Scottish Government responded as follows:**

1. (a) “The NHS Terms and Conditions Handbook” refers to NHS terms and conditions of service handbook at: <http://www.msg.scot.nhs.uk/index.php/pay/agenda-for-change> as amended from time to time.

(b) “Injury allowance” refers to the allowance by that name to be set out in a new section of the NHS terms and conditions handbook with effect from 31 March 2013. The UK NHS Injury Review Group is updating the handbook to incorporate this. The new section (along with guidance) will set out the terms and conditions relating to the allowance (including how it is to be calculated). The new section is to be ratified by the NHS Staff Council on 26 February 2013 and published on the above website by 31 March 2013.

(c) The reference to “injury allowance” in the handbook is ambulatory. Regulation 4(10) refers to “an injury allowance payable on or after 31 March 2013 in accordance with the terms and conditions of the person’s employment”. Those terms, particularly in relation to a person entering NHS employment after that date, may change. It is considered sufficiently clear that “injury allowance” must refer to that allowance in the NHS handbook which is payable in accordance with the terms as amended from time to time.

(d) An updated handbook (incorporating the new section) is due to be published on or before 31 March 2013 at: <http://www.msg.scot.nhs.uk/index.php/pay/agenda-for-change>. Information about the new injury allowance will also be notified to relevant staff.

(e) Since the updated handbook is to be published on or before 31 March 2013, the reference in regulation 4(11) to the injury allowance is considered to be sufficiently clear.

2. Regulation 18B(1) requires that a claim must be made in such form, and within such period, as the Scottish Ministers may specify. Information on how to make a claim, including the form to be used and the period for making claims, will be set out in guidance published by the Scottish Government. The NHS handbook will signpost where staff can obtain this information. Section 10(2) of, and paragraph 11 of Schedule 3 to, the Superannuation Act 1972 provide that the regulations may confer such functions as they consider necessary or expedient. It is considered expedient to enable the Scottish Ministers to specify the form and period because these are administrative matters which may be subject to regular revision. However, any material change to the form or the period for making claims will be published in advance and notified to NHS staff.

3. “That person” is intended to refer to the person making a claim for benefit to the Scottish Ministers under regulation 18B(1). Regulation 18B(3) should have referred to “the person making the claim”. Since subsection (3) applies only in the case of a claim under subsection (1), it is considered sufficiently clear that “that person” must refer to the person making a claim under that subsection and cannot

reasonably refer to any other person. However, this reference will be corrected when the Regulations are next amended.

4. Any request by the Scottish Ministers for information relating to any change referred to new regulation 21A(1)(b) will set out what is required and how it is to be provided. Guidance will also be provided as to the form in which information should be provided. It is therefore considered that it will be sufficiently clear as to how persons are to comply.

Members who would like a printed copy of this *Numbered Report* to be forwarded to them should give notice at the Document Supply Centre.

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