



The Scottish Parliament
Pàrlamaid na h-Alba

JUSTICE COMMITTEE

AGENDA

35th Meeting, 2017 (Session 5)

Tuesday 5 December 2017

The Committee will meet at 9.45 am in the Mary Fairfax Somerville Room (CR2).

1. **Decision on taking business in private:** The Committee will decide whether to consider a draft Stage 1 report on the Civil Litigation (Expenses and Group Proceedings) in private at item 7 today and at future meetings.

2. **Subordinate legislation:** The Committee will take evidence on the—

First-tier Tribunal for Scotland (Transfer of Functions of the Additional Support Needs Tribunals for Scotland) Regulations 2018 [draft];

First-tier Tribunal for Scotland (Transfer of Functions of the Scottish Charity Appeals Panel) Regulations 2018 [draft];

First-tier Tribunal for Scotland Health and Education Chamber and Upper Tribunal for Scotland (Composition) Regulations 2018 [draft];

First-tier Tribunal for Scotland General Regulatory Chamber Charity Appeals Cases and Upper Tribunal for Scotland (Composition) Regulations 2018 [draft];

Public Records (Scotland) Act 2011 (Authorities) Amendment Order 2018 [draft];

from—

Annabelle Ewing, Minister for Community Safety and Legal Affairs, Hannah Frodsham, Policy Executive, and John St Clair, Senior Principal Legal Officer, Scottish Government.

3. **Subordinate legislation:** Annabelle Ewing (Minister for Community Safety and Legal Affairs) to move—

S5M-08839—That the Justice Committee recommends that the First-tier Tribunal for Scotland (Transfer of Functions of the Additional Support Needs Tribunals for Scotland) Regulations 2018 [draft] be approved;

S5M-08840—That the Justice Committee recommends that the First-tier Tribunal for Scotland (Transfer of Functions of the Scottish Charity Appeals Panel) Regulations 2018 [draft] be approved;

S5M-08841—That the Justice Committee recommends that the First-tier Tribunal for Scotland Health and Education Chamber and Upper Tribunal for Scotland (Composition) Regulations 2018 [draft] be approved;

S5M-09234—That the Justice Committee recommends that the First-tier Tribunal for Scotland General Regulatory Chamber Charity Appeals Cases and Upper Tribunal for Scotland (Composition) Regulations 2018 [draft] be approved;

S5M-08843—That the Justice Committee recommends that the Public Records (Scotland) Act 2011 (Authorities) Amendment Order 2018 [draft] be approved.

4. **Subordinate legislation:** The Committee will consider the following negative instruments—

Police Pension Scheme (Scotland) Amendment Regulations 2017 (SSI 2017/387);

Prisons and Young Offenders Institutions (Scotland) Amendment Rules 2017 (SSI 2017/393);

First-tier Tribunal for Scotland Health and Education Chamber and General Regulatory Chamber Charity Appeals (Procedure) (Miscellaneous Amendments) Regulations 2017 (SSI 2017/398).

5. **Justice Sub-Committee on Policing:** The Committee will consider a report back from the Sub-Committee meeting on 23 November 2017.

6. **Offensive Behaviour at Football and Threatening Communications (Repeal) (Scotland) Bill:** The Committee will take evidence on the Bill at Stage 1 from—

Annabelle Ewing, Minister for Community Safety and Legal Affairs, David Bell, Senior Policy Officer, Katherine Myant, Principal Research Officer, and Craig French, Solicitor, Directorate for Legal Services, Scottish Government.

7. **Civil Litigation (Expenses and Group Proceedings) (Scotland) Bill:** The Committee will consider a draft Stage 1 report.

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The papers for this meeting are as follows—

Agendas item 2 and 3

Paper by the clerk - affirmative instruments J/S5/17/35/1

Agenda item 4

Paper by the clerk - negative instruments J/S5/17/35/2

Agenda item 5

Paper by the clerk - Justice Sub-Committee on Policing J/S5/17/35/3

Agenda item 6

Paper by the clerk - Offensive Behaviour at Football and Threatening Communications (Repeal) (S) Bill J/S5/17/35/4

Private paper - Offensive Behaviour at Football and Threatening Communications (Repeal) (S) Bill J/S5/17/35/5 (P)

[Offensive Behaviour at Football and Threatening Communications \(Repeal\) \(S\) Bill and accompanying documents](#)

[All written submissions received on the Bill](#)

Agenda item 7

Private paper - Civil Litigation (Expenses and Group Proceedings) (S) Bill J/S5/17/35/6 (P)

[Civil Litigation \(Expenses and Group Proceedings\) \(S\) Bill and accompanying documents](#)

[All written submissions received on the Bill](#)

Justice Committee

35th Meeting, 2017 (Session 5), Tuesday 5 December 2017

Subordinate legislation

Note by the clerk

Purpose

1. This paper invites the Committee to consider the following affirmative instruments:

- [First-tier Tribunal for Scotland \(Transfer of Functions of the Additional Support Needs Tribunals for Scotland\) Regulations 2018 \[draft\]](#)
- [First-tier Tribunal for Scotland \(Transfer of Functions of the Scottish Charity Appeals Panel\) Regulations 2018 \[draft\]](#)
- [First-tier Tribunal for Scotland Health and Education Chamber and Upper Tribunal for Scotland \(Composition\) Regulations 2018 \[draft\]](#)
- [First-tier Tribunal for Scotland General Regulatory Chamber Charity Appeals Cases and Upper Tribunal for Scotland \(Composition\) Regulations 2018 \[draft\]](#)
- [Public Records \(Scotland\) Act 2011 \(Authorities\) Amendment Order 2018 \[draft\]](#)

**FIRST-TIER TRIBUNAL FOR SCOTLAND (TRANSFER OF FUNCTIONS OF THE
ADDITIONAL SUPPORT NEEDS TRIBUNALS FOR SCOTLAND)
REGULATIONS 2018 [DRAFT]**

Introduction

2. This instrument is made under sections 20(2), 28(2) and (6) and 79(1) and paragraph 1(1) of schedule 2 of the Tribunals (Scotland) Act 2014. The Regulations make provision for the transfer to the First-tier Tribunal for Scotland of the functions of the Additional Support Needs Tribunals for Scotland (ASNTS). The First-tier Tribunal was set up by section 1 of the Tribunals (Scotland) Act 2014. It is divided into chambers, with the chambers hearing cases according to the subject-matter of the case. The functions of the ASNTS are transferred to the First-tier Tribunal for Scotland with allocation to the Health and Education Chamber.

3. Further details on the purpose of the instrument can be found in the policy note (see below).

Policy Note: First-tier Tribunal for Scotland (Transfer of Functions of the Additional Support Needs Tribunals for Scotland) Regulations 2018 [draft]

Policy Objectives

1. The 2014 Act allows the Scottish Ministers to transfer the functions of tribunals listed in schedule 1 of the Act to the Scottish Tribunals.
2. These regulations transfer into the Scottish Tribunals the existing functions of the Additional Support Needs Tribunals for Scotland (ASNTS) in so far as practicable. Upon transfer the ASNTS will be abolished and first decisions will be heard in the First-tier Tribunal for Scotland, Health and Education Chamber (First-tier Tribunal) with onward appeals to the Upper Tribunal for Scotland (Upper Tribunal).
3. These regulations also set out transitional arrangements for the handling of cases during transfer. Cases in progress on the day of transfer will be continued in the First-tier Tribunal with the same members dealing with the case, wherever possible. Unexercised rights of appeal will be to the Upper Tribunal, in place of the Court of Session. If a party has already exercised its right of appeal to the Court of Session prior to the transfer day then the appeal will continue in the Court of Session.
4. Existing members of the ASNTS will transfer to the First-tier Tribunal as long as they meet the relevant eligibility criteria as set out in regulations (SSI 2015/381 and SSI 2017/274).
5. Fuller details of the policy objectives relating to the 2014 Act are described in the Policy Memorandum which accompanied the Tribunals Bill. The link below shows the passage of the Bill through Parliament and includes the Policy Memorandum.
<http://www.scottish.parliament.uk/parliamentarybusiness/Bills/62938.aspx>

Consultation

6. A consultation with interested parties took place between May and August 2017. There were 15 responses to this consultation. The responses are available on the Scottish Government website:
<https://consult.scotland.gov.uk/tribunals-administrative-justice-policy/additional-support-needs-tribunals/>

Impact Assessments

7. An Equality Impact Assessment has already been completed for the Tribunals (Scotland) Bill – see link below:
<http://www.scotland.gov.uk/Resource/0042/00421637.pdf>
8. An Equality Impact Assessment is not required for these regulations.
9. A Business and Regulatory Impact Assessment is not required as the instrument has no financial effects on the Scottish Government, local government or on business.

FIRST-TIER TRIBUNAL FOR SCOTLAND (TRANSFER OF FUNCTIONS OF THE SCOTTISH CHARITY APPEALS PANEL) REGULATIONS 2018 [DRAFT]

Introduction

4. This instrument is made under sections 20(2), 28(2) and (6) and 79(1) and paragraph 1(1) of schedule 2 of the Tribunals (Scotland) Act 2014. The Regulations make provision for the transfer to the First-tier Tribunal for Scotland of the functions and members of the Scottish Charity Appeals Panel. The First-tier Tribunal was set up by section 1 of the Tribunals (Scotland) Act 2014. It is divided into chambers, with the chambers hearing cases according to the subject-matter of the case. The functions of the Scottish Charity Appeals Panel are transferred to the First-tier Tribunal for Scotland with allocation to the General Regulatory Chamber.

5. Further details on the purpose of the instrument can be found in the policy note (see below).

Policy Note: First-tier Tribunal for Scotland (Transfer of Functions of the Scottish Charity Appeals Panel) Regulations 2018 [draft]

Policy Objectives

1. The 2014 Act allows the Scottish Ministers to transfer the functions of tribunals listed in schedule 1 of the Act to the Scottish Tribunals.
2. These regulations transfer into the Scottish Tribunals the existing functions of the Scottish Charity Appeals Panel (SCAP) in so far as practicable. Upon transfer the SCAP will be abolished and first decisions will be heard in the First-tier Tribunal for Scotland, General Regulatory Chamber (First-tier Tribunal) with onward appeals to the Upper Tribunal for Scotland (Upper Tribunal).
3. These regulations also set out transitional arrangements for the handling of cases during transfer. Cases in progress on the day of transfer will be continued in the First-tier Tribunal with the same members dealing with the case, wherever possible. Unexercised rights of appeal will be to the Upper Tribunal, in place of the Court of Session. If a party has already exercised its right of appeal to the Court of Session prior to the transfer day then the appeal will continue in the Court of Session.
4. Existing members of the SCAP will transfer to the First-tier Tribunal General Regulatory Chamber as long as they meet the relevant eligibility criteria as set out in regulations ((SSI 2015/381 and SSI 2017/274).
5. Upon reaching the age of 70, legal and ordinary members will only be eligible to remain in office by virtue of section 26(4) to (6) of the Judicial Pensions and Retirement Act 1993. This allows members to continue in office on an annual rolling basis up until reaching the age of 75 if the Scottish Ministers, following consultation with the President of Tribunals, consider it is in the public interest.
6. Fuller details of the policy objectives relating to the 2014 Act are described in the Policy Memorandum which accompanied the Tribunals Bill. The link below

shows the passage of the Bill through Parliament and includes the Policy Memorandum.

<http://www.scottish.parliament.uk/parliamentarybusiness/Bills/62938.aspx>

Consultation

7. A consultation with interested parties took place between May and August 2017. There were 2 responses to this consultation. The responses are available on the Scottish Government website:
<https://consult.scotland.gov.uk/tribunals-administrative-justice-policy/transferring-scap-to-scottish-tribunals/>

Impact Assessments

8. An Equality Impact Assessment has already been completed for the Tribunals (Scotland) Bill – see link below:
<http://www.scotland.gov.uk/Resource/0042/00421637.pdf>
9. An Equality Impact Assessment is not required for these regulations.
10. A Business and Regulatory Impact Assessment is not required as the instrument has no financial effects on the Scottish Government, local government or on business.

**FIRST-TIER TRIBUNAL FOR SCOTLAND HEALTH AND EDUCATION
CHAMBER AND UPPER TRIBUNAL FOR SCOTLAND (COMPOSITION)
REGULATIONS 2018 [DRAFT]**

Introduction

6. This instrument is made under sections 38(1) and 40(1) of the Tribunals (Scotland) Act 2014. The Regulations make provision as to the composition of the First-tier Tribunal for Scotland when dealing with a case in the Health and Education Chamber. They also make provision as to the composition of the Upper Tribunal for Scotland when hearing appeals from the First-tier Tribunal for Scotland Health and Education Chamber.

7. Further details on the purpose of the instrument can be found in the policy note (see below).

Policy Note: First-tier Tribunal for Scotland Health and Education Chamber and Upper Tribunal for Scotland (Composition) Regulations 2018 [draft]

Policy Objectives

1. The 2014 Act allows the Scottish Ministers to determine the composition of the First-tier Tribunal or Upper Tribunal when convened to decide any matter in a case before it.
2. These regulations set out the composition of the First-tier Tribunal for Scotland Health and Education Chamber (First-tier Tribunal) when hearing cases. The policy intent is to replicate the existing composition for cases when they are heard in the Additional Support Needs Tribunals for Scotland. The regulations specify an exception to the general composition in cases where a legal member sitting alone may decide whether a child over the age of 12 has capacity to exercise their rights under the Education (Additional Support for Learning) (Scotland) Act 2004 on their own behalf.
3. These regulations also set out the composition of the Upper Tribunal for Scotland (Upper Tribunal) hearing appeals or referrals from the First-tier Tribunal. The policy intent is to replicate the existing procedure of cases being heard in the Court of Session. Appeals will be heard in the Upper Tribunal, by Court of Session judges.
4. The regulations allow the Chamber President of the First-tier Tribunal Health and Education Chamber to hear appeals in the Upper Tribunal provided they have had no involvement with the case prior to the appeal. The Lord President and the President of Tribunals being members of the Upper Tribunal may also hear appeals or referrals from the First-tier Tribunal.
5. Fuller details of the policy objectives relating to the 2014 Act are described in the Policy Memorandum which accompanied the Tribunals Bill. The link below shows the passage of the Bill through Parliament and includes the Policy Memorandum.
<http://www.scottish.parliament.uk/parliamentarybusiness/Bills/62938.aspx>

Consultation

6. A consultation with interested parties took place between May and August 2017. There were 15 responses to this consultation. The responses are available on the Scottish Government website:
<https://consult.gov.scot/tribunals-administrative-justice-policy/additional-support-needs-tribunals/>

Impact Assessments

7. An Equality Impact Assessment has already been completed for the Tribunals (Scotland) Bill – see link below:
<http://www.scotland.gov.uk/Resource/0042/00421637.pdf>
8. An Equality Impact Assessment is not required for these Regulations.
9. A Business and Regulatory Impact Assessment is not required as the instrument has no financial effects on the Scottish Government, local government or on business.

**FIRST-TIER TRIBUNAL FOR SCOTLAND GENERAL REGULATORY
CHAMBER CHARITY APPEALS CASES AND UPPER TRIBUNAL FOR
SCOTLAND (COMPOSITION) REGULATIONS 2018 [DRAFT]**

Introduction

8. This instrument is made under sections 38(1) and 40(1) of the Tribunals (Scotland) Act 2014 (the 2014 Act). The Regulations set out the composition of the First-tier Tribunal for Scotland General Regulatory Chamber (First-tier Tribunal) when hearing Charity Appeals cases. The policy intent is to replicate the existing composition for cases when they are heard in the Scottish Charity Appeals Panel (SCAP). This means that cases will be heard by three members, one of whom will be a chairing (legal) member.

9. These regulations also set out the composition of the Upper Tribunal for Scotland (Upper Tribunal) hearing appeals or referrals from the First-tier Tribunal for Charity Appeals cases. The policy intent is to replicate the existing procedure of cases when heard in the Court of Session.

10. Further details on the purpose of the instrument can be found in the policy note (see below).

Policy Note: First-tier Tribunal for Scotland General Regulatory Chamber Charity Appeals Cases and Upper Tribunal for Scotland (Composition) Regulations 2018 [draft]

Policy Objectives

1. The 2014 Act allows the Scottish Ministers to determine the composition of the First-tier Tribunal or Upper Tribunal when convened to decide any matter in a case before it.
2. These regulations set out the composition of the First-tier Tribunal for Scotland General Regulatory Chamber (First-tier Tribunal) when hearing Charity Appeals cases. The policy intent is to replicate the existing composition for cases when they are heard in the Scottish Charity Appeals Panel (SCAP). This means that cases will be heard by three members, one of whom will be a chairing (legal) member.
3. These regulations also set out the composition of the Upper Tribunal for Scotland (Upper Tribunal) hearing appeals or referrals from the First-tier Tribunal for Charity Appeals cases. The policy intent is to replicate the existing procedure of cases when heard in the Court of Session.
4. Although there will not be a Chamber President of the First-tier Tribunal General Regulatory Chamber in post when the Chamber is established, the regulations allow a person holding that position in future to hear appeals in the Upper Tribunal provided they have had no involvement with the case prior to the appeal. The Lord President and the President of Tribunals being members of the Upper Tribunal may also hear appeals or referrals from the First-tier Tribunal.

5. Fuller details of the policy objectives relating to the 2014 Act are described in the Policy Memorandum which accompanied the Tribunals Bill. The link below shows the passage of the Bill through Parliament and includes the Policy Memorandum.
<http://www.scottish.parliament.uk/parliamentarybusiness/Bills/62938.aspx>

Consultation

6. A consultation with interested parties took place between May and August 2017. There were 2 responses to this consultation. The responses are available on the Scottish Government website:
<https://consult.scotland.gov.uk/tribunals-administrative-justice-policy/transferring-scap-to-scottish-tribunals/>

Impact Assessments

7. An Equality Impact Assessment has already been completed for the Tribunals (Scotland) Bill – see link below:
<http://www.gov.scot/Resource/0042/00421637.pdf>
8. An Equality Impact Assessment was not required for these regulations.
9. A Business and Regulatory Impact Assessment is not required as the instrument has no financial effects on the Scottish Government, local government or on business.

PUBLIC RECORDS (SCOTLAND) ACT 2011 (AUTHORITIES) AMENDMENT ORDER 2018 [DRAFT]

Introduction

11. This instrument is made under section 2(2) of the Public Records (Scotland) Act 2011. The Order amends the schedule of the Public Records (Scotland) Act 2011, which lists the bodies, office-holders and other persons that are subject to Part 1 of that Act, to add the First-tier Tribunal for Scotland and the Upper Tribunal for Scotland. Part 1 of that Act makes provision for records management plans.

12. Further details on the purpose of the instrument can be found in the policy note (see below).

Policy Note: Public Records (Scotland) Act 2011 (Authorities) Amendment Order 2018 [draft]

Policy Objectives

1. This Order amends the Public Records (Scotland) Act 2011 (“the 2011 Act”) to add the First-tier Tribunal for Scotland and the Upper Tribunal for Scotland (“the Scottish Tribunals”) to its schedule as authorities that are listed for the purposes of the Act.
2. The 2011 Act requires listed authorities to prepare and submit a five year Records Management Plan (“RMP”) to the Keeper for approval. The Act requires the authorities to implement and comply with the provisions of its RMP. The RMP is required to set out proper arrangements for the management of authorities records. Where authorities fail to meet their obligations under the 2011 Act the Keeper has statutory powers to undertake records management reviews and issue action notices for improvement. The provisions of the 2011 Act applies to all authorities listed in its schedule.
3. Currently a number of tribunals are listed in the 2011 Act which are due to transfer to the Scottish Tribunals under provisions set out in the Tribunals (Scotland) Act 2014. As the tribunals are transferred their listing is deleted because the tribunal is abolished upon transfer. This means that the 2011 Act no longer applies to these jurisdictions. To rectify this an amendment requires to be made to add the Scottish Tribunals as listed authorities.

Impact Assessments

4. As the Order is a technical amendment to add references to the Scottish Tribunals we do not consider there is a requirement for any Impact Assessments on this occasion.
5. An Equality Impact Assessment was completed for the Tribunals (Scotland) Bill – see link: <http://www.scotland.gov.uk/Resource/0042/00421637.pdf>

DELEGATED POWERS AND LAW REFORM COMMITTEE CONSIDERATION

13 The Delegated Powers and Law Reform Committee considered these instruments at its meetings on 8 November and 28 November 2017 and agreed that it did not need to draw them to the attention of the Parliament on any grounds within its remit.

JUSTICE COMMITTEE CONSIDERATION

14. The Justice Committee is required to report to the Parliament on the instruments by 8 December 2017 on the first four, and by 18 December on the last one. The Minister for Community Safety and Legal Affairs has lodged motions S5M-08839, S5M-08840, S5M-08841, S5M-09234 and S5M-08843 proposing that the Committee recommends approval of the instruments. The Minister is due to attend the meeting on 5 December to answer any questions on the instruments and to move the motions for approval.

15. It is for the Committee to decide whether or not to agree to the motions, and then to report to the Parliament by 8 December 2017. Thereafter, the Parliament will be invited to approve the instruments.

16. The Committee is asked to delegate to the Convener authority to approve the report on the instruments for publication.

Justice Committee**35th Meeting, 2017 (Session 5), Tuesday 5 December 2017****Subordinate legislation****Note by the clerk****Purpose**

1. This paper invites the Committee to consider the following negative instruments:
 - [Police Pension Scheme \(Scotland\) Amendment Regulations 2017 \(SSI 2017/387\)](#) [see page 3];
 - [Prisons and Young Offenders Institutions \(Scotland\) Amendment Rules 2017 \(SSI 2017/393\)](#) [see page 6];
 - [First-tier Tribunal for Scotland Health and Education Chamber and General Regulatory Chamber Charity Appeals \(Procedure\) \(Miscellaneous Amendments\) Regulations 2017 \(SSI 2017/398\)](#) [see page 8].
2. If the Committee agrees to report to the Parliament on any of the instruments it is required to do so by 11 December on the first instrument, by 18 December on the second instrument and by 8 January on the third instrument.

Procedure for negative instruments

3. Negative instruments are instruments that are “subject to annulment” by resolution of the Parliament for a period of 40 days after they are laid. This means they become law unless they are annulled by the Parliament. All negative instruments are considered by the Delegated Powers and Law Reform Committee (on various technical grounds) and by the relevant lead committee (on policy grounds).
4. Under Rule 10.4, any member (whether or not a member of the lead committee) may, within the 40-day period, lodge a motion for consideration by the lead committee recommending annulment of the instrument.
5. If the motion is agreed to by the lead committee, the Parliamentary Bureau must then lodge a motion to annul the instrument to be considered by the Parliament as a whole. If that motion is also agreed to, the Scottish Ministers must revoke the instrument.
6. Each negative instrument appears on the Justice Committee’s agenda at the first opportunity after the Delegated Powers and Law Reform Committee has reported on it. This means that, if questions are asked or concerns raised, consideration of the instrument can usually be continued to a later meeting to allow the Committee to gather more information or to invite a Minister to give evidence on the instrument. Members should however note that, for scheduling reasons, it is not *always* possible to continue an instrument to the following week. For this reason, if any Member has significant concerns about a negative instrument, they are encouraged to make this known to the clerks in advance of the meeting.

7. In many cases, the Committee may be content simply to note the instrument and agree to make no recommendations on it.

Guidance on subordinate legislation

8. Further guidance on subordinate legislation is available on the Delegated Powers and Law Reform Committee's web page at:

<http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/delegated-powers-committee.aspx>

Recommendation

9. **The Committee is invited to consider the instruments.**

**POLICE PENSION SCHEME (SCOTLAND) AMENDMENT REGULATIONS 2017
(SSI 2017/387)**

Introduction

10. The instrument is made under sections 1(1) and (2)(g) of, and paragraph 7(b) of Schedule 2 to the Public Service Pensions Act 2013. The Regulations bring into force amendments to the Police Pension Scheme (Scotland) Regulations 2015. Where an ill-health pension ceases to become payable, the retirement account must be closed and an active member's or pensioner member's account re-established and set at a level of pension equivalent to the amount of lower-tier pension payable when the award was first made. Regulation 15 removes the requirement for the scheme manager to hold a signed nomination form before a surviving adult partner pension can be made payable.

11. Further details on the purpose of the instrument can be found in the policy note (see below).

12. The instrument comes into force on 21 December 2017.

DELEGATED POWERS AND LAW REFORM COMMITTEE CONSIDERATION

13. The Delegated Powers and Law Reform (DPLR) Committee considered this instrument at its meeting on 28 November 2017 and agreed to draw the Regulations to the attention of the Parliament because the new regulation 17A(1) of the Police Pension Scheme (Scotland) Regulations 2015, which is inserted by regulation 6 of the instrument, should have specified "automatic enrolment date" rather than "enrolment date", which would have attracted the definition stated in regulation 4.

14. The DPLR Committee noted that the Scottish Government had undertaken to correct the error at the first legislative opportunity. Correspondence between the DPLR Committee and the Scottish Government is included in the Annexe below.

JUSTICE COMMITTEE CONSIDERATION

15. If the Committee agrees to report to the Parliament on this instrument, it is required to do so by 11 December 2017.

**Policy Note: Police Pension Scheme (Scotland) Amendment Regulations 2017
(SSI 2017/387)**

Policy Objective

1. The purpose of this instrument is to bring into force amendments to the Police Pension Scheme (Scotland) Regulations 2015.
2. The Police Service of Scotland's staging date under Automatic Enrolment legislation was 1 October 2017. This instrument makes additional provision covering scheme membership following enrolment and the application of exceptions to automatically enrolling certain officers.
3. The Children and Families Act 2014 provided for parental leave to be shared between parents. The Police Service of Scotland Regulations 2013 were amended

in December 2016 to include provision for this to extend to police officers, and this instrument updates the provisions of the pension scheme in line with those regulations.

4. Prior to 2015, the structure of benefits of the police pension schemes in Scotland have mirrored those elsewhere in the UK. This has provided for ease of transferring between UK forces, as the force to whom the officer moves takes on responsibility for the officer's accrued pension without the exchange of transfer values. Under the terms of the 2015 scheme in Scotland, the accrual rate was adjusted from the UK-wide annual accrual of 1/55.3ths of pensionable earnings, to 1/56.1ths. This provides for more favourable early retirement factors from age 55 in Scotland. Regulation 12 of this instrument requires that where an officer has moved to Police Scotland from elsewhere in the UK and takes early retirement with actuarial reduction, the proportion of the officer's retirement pension accrued elsewhere in the UK will be subject to the relevant actuarial reduction in their previous UK scheme. This ensures that an appropriate reduction is made to that officer's pension at retirement based on the pension accrual throughout their service.
5. This instrument inserts certain administrative provisions. Where an ill-health pension ceases to become payable, the retirement account must be closed and an active member's or pensioner member's account re-established and set at a level of pension equivalent to the amount of lower-tier pension payable when the award was first made. Regulation 15 removes the requirement for the scheme manager to hold a signed nomination form before a surviving adult partner pension can be made payable.
6. Further minor amendments and corrections are made to certain definitions and the discretion for the scheme manager to make a lump sum death grant payable consistent with the provisions of the Police Pension Scheme 2006.

Consultation

7. To comply with the requirements of Section 21 of the 2013 Act, a draft statutory instrument was issued for consultation between 27 July to 18 September 2017, with a further brief consultation from 12 October 2017 to 26 October 2017. A copy of the consultation document is available on the Scottish Public Pension Agency's website www.sppa.gov.uk. A summary of consultation responses will be made available on the SPPA website.

Financial Effects

8. Some long-term savings to the pension scheme may be made by the provision at Regulation 12.

Business and Regulatory Impact Assessment

9. This policy does not impose any additional costs or reduce existing costs for business, third or public sector organisations and on that basis no Business and Regulatory Impact Assessment is required for these Regulations.

Police Pension Scheme (Scotland) Amendment Regulations 2017 (SSI 2017/387)

On 15 November 2018, the Scottish Government was asked:

1. Regulation 4 inserts a definition of "automatic enrolment date" in regulation 16 (interpretation of Chapter) of the Police Pension Scheme (Scotland) Regulations 2015. Regulation 6 inserts a new regulation 17A(1) of the 2015 Regulations, which makes provision in relation to circumstances when the employer may choose not to enrol an officer on that person's "enrolment date" or automatic re-enrolment date.

Is there an error so far as it may have been intended in new regulation 17A(1) to specify "automatic enrolment date" rather than enrolment date, which would attract the definition stated in regulation 4? Otherwise please explain why it is considered appropriate to state "enrolment date" in new regulation 17A(1).

2. Is corrective action proposed?

The Scottish Government responded as follows:

The Scottish Government accepts that there is an error so far as new regulation 17A(1) should have specified "automatic enrolment date" rather than enrolment date, which would attract the definition stated in regulation 4.

The Scottish Government considers that a person reading the amended legislation will construe enrolment date as automatic enrolment date. The Scottish Government nevertheless undertakes to correct the error at the first legislative opportunity.

PRISONS AND YOUNG OFFENDERS INSTITUTIONS (SCOTLAND) AMENDMENT RULES 2017 (SSI 2017/393)

Introduction

16. The instrument is made under section 39 of the Prisons (Scotland) Act 1989. The Rules support the move, in November 2018, to smoke free prisons. Rule 36 is being amended to enable a prison officer to instruct a prisoner to stop smoking and open the windows and vents in their cell for a period of 30 minutes before the prison officer begins a cell certification check, and to refrain from smoking until the process is completed. A cell certification check is undertaken to ensure the security and safety of the cells available for use.

17. Further details on the purpose of the instrument can be found in the policy note (see below).

18. The instrument comes into force on 8 January 2018.

DELEGATED POWERS AND LAW REFORM COMMITTEE CONSIDERATION

19. The Delegated Powers and Law Reform (DPLR) Committee considered this instrument at its meeting on 21 November 2017 and agreed that it did not need to draw it to the attention of the Parliament on any grounds within its remit.

JUSTICE COMMITTEE CONSIDERATION

20. If the Committee agrees to report to the Parliament on this instrument, it is required to do so by 18 December 2017.

Policy Note: Prisons and Young Offenders Institutions (Scotland) Amendment Rules 2017 (SSI 2017/393)

Policy Objective

1. The Prison Rules set out provisions relating to the regulation and management of Prisons and Young Offenders Institutions and various matters concerning those who are required to be detained in these institutions (such as their classification, treatment, discipline, employment and control).
2. The amendments are designed to support the move to smoke free prisons in November 2018.
3. The definition of 'smoke' in Rule 2 is being extended to include nicotine vapour products, as defined in the Tobacco and Primary Medical Services (Scotland) Act 2010.
4. Rule 36 is being amended to enable a prison officer to instruct a prisoner to stop smoking and open the windows and vents in their cell for a period of 30 minutes before the prison officer begins a cell certification check, and to refrain from smoking until the process is completed. A cell certification check is undertaken to ensure the security and safety of the cells available for use.

Impact Assessment

5. An Equality and Human Rights Impact Assessment was carried out and no potential for unlawful discrimination or adverse impact or breach of human rights articles has been identified.

Consultation

6. There has been consultation with operational managers and policy colleagues within the Scottish Prison Service, Scottish Government Health Directorate, NHS, TUS colleagues.

Financial Effect

7. The Cabinet Secretary for Justice confirms that no Business and Regulatory Impact Assessment is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

**FIRST-TIER TRIBUNAL FOR SCOTLAND HEALTH AND EDUCATION CHAMBER
AND GENERAL REGULATORY CHAMBER CHARITY APPEALS (PROCEDURE)
(MISCELLANEOUS AMENDMENTS) REGULATIONS 2017 (SSI 2017/398)**

Introduction

21. The instrument is made under paragraph 4(2) of Schedule 9 of the Tribunals (Scotland) Act 2014. The Regulations make minor amendments to the First-tier Tribunal for Scotland Health and Education Chamber (Procedure) Regulations 2017 (SSI 2017/366), especially in setting out in full the penalties to which a person may be liable if orders or citations in respect of recovery of documents or attendance of witnesses are not obeyed. The Regulations also amend the First-tier Tribunal for Scotland General Regulatory Chamber Charity Appeals (Procedure) Regulations 2017 (SSI 2017/364) by clarifying how the Rules of Procedure contained in the schedule of that instrument are to be cited.

22. Further details on the purpose of the instrument can be found in the policy note (see below).

23. The instrument comes into force on 12 January 2017.

DELEGATED POWERS AND LAW REFORM COMMITTEE CONSIDERATION

24. The Delegated Powers and Law Reform (DPLR) Committee considered this instrument at its meeting on 21 November 2017 and agreed that it did not need to draw it to the attention of the Parliament on any grounds within its remit.

JUSTICE COMMITTEE CONSIDERATION

25. If the Committee agrees to report to the Parliament on this instrument, it is required to do so by 8 January 2018.

Policy Note: First-tier Tribunal for Scotland Health and Education Chamber and General Regulatory Chamber Charity Appeals (Procedure) (Miscellaneous Amendments) Regulations 2017 (SSI 2017/398)

Policy Objectives

1. The 2014 Act allows rules to be made to regulate the practice and procedure of both the First-tier and Upper Tribunals. Paragraph 4(2) of Schedule 9 of the 2014 Act allows rules to be made by the Scottish Ministers until such time as responsibility for rule making passes to the Court of Session.
2. The First-tier Tribunal for Scotland Health and Education Chamber and the General Regulatory Chamber (Procedure) Regulations 2018 set out the rules of procedure that are to apply in the First-tier Tribunal Health and Education Chamber (referred to here as the Health and Education Chamber Rules).
3. In rules 32, 33, 78 and 79 of the Health and Education Chamber Rules, it states that a person guilty of an offence in proceedings is liable on summary conviction to a fine not exceeding level 5 on the standard scale. This is not accurate as the

Scottish Tribunals (Offences in Relation to Proceedings) Regulations 2016¹ provide that a person who commits an offence is liable on summary conviction to imprisonment for a term not exceeding 12 months or a fine not exceeding level 5 (or both), or on indictment to imprisonment for a term not exceeding 2 years or a fine not exceeding £5,000 (or both). These regulations correct this anomaly.

4. This instrument also corrects paragraph (7) of rule 84 of the Health and Education Chamber Rules which makes provision enabling the persons, as well as the parties and their representatives, to attend a private hearing of a disability claim under paragraph 8 of schedule 17 of the Equality Act 2010. This includes in subparagraph (a) of paragraph (7) "the person to whom the claim relates, where the person is the claimant". This reference is superfluous as rule 60 already defines a "party" as including the claimant.
5. These regulations correct rule 92 of the Health and Education Chamber Rules. The text of paragraphs (2) and (3) should all be in paragraph (2), there should not be a full stop at the end of paragraph (2), and as a result paragraphs (2) to (5) should be re-numbered (2) to (4). These regulations make those corrections.
6. These regulations also correct the citation at regulation 1(1) of the First-tier Tribunal for Scotland General Regulatory Chamber Charity Appeals (Procedure) Regulations 2017. This should read "the First-tier Tribunal for Scotland General Regulatory Chamber (Charity Appeals) Rules of Procedure 2018".
7. Fuller details of the policy objectives relating to the 2014 Act are described in the Policy Memorandum which accompanied the Tribunals Bill. The link below shows the passage of the Bill through Parliament and includes the Policy Memorandum. <http://www.scottish.parliament.uk/parliamentarybusiness/Bills/62938.aspx>

Impact Assessments

8. As these regulations make technical amendments to the First-tier Tribunal Health and Education Chamber and General Regulatory Chamber Charity Appeals Procedural regulations we do not consider there is a requirement for any Impact Assessments on this occasion.
9. An Equality Impact Assessment was completed for the Upper Tribunal for Scotland (Rules of Procedure) Regulations 2016 – see link below: <http://www.gov.scot/Publications/2016/08/9309>
10. An Equality Impact Assessment was also completed for the Tribunals (Scotland) Bill – see link below: <http://www.scotland.gov.uk/Resource/0042/00421637.pdf>

¹ <http://www.legislation.gov.uk/ssi/2016/342/made>

Justice Committee

35th Meeting, 2017 (Session 5), Tuesday 5 December 2017

Feedback from the Justice Sub-Committee on Policing

Note by the clerk

1. The Justice Sub-Committee on Policing met on 23 November 2017 when it held an evidence session on the progress of the two independent investigations into Police Scotland's Counter Corruption Unit.
2. The Sub-Committee took evidence from Police Scotland, the Scottish Police Authority, the Association of Scottish Police Superintendents and UNISON.
3. The Sub-Committee heard about the restructuring of Police Scotland's professional standards department, and how Police Scotland handles complaints against its officers.
4. The Sub-Committee also asked questions about the current status of the investigations into the CCU, and about the publication status of the forthcoming reports of these investigations.
5. The Sub-Committee will next meet on 7 December 2017, when it will hold an evidence session on Police Scotland's custody provision.

Justice Committee

35th Meeting, 2017 (Session 5), Tuesday 5 December 2017

**Offensive Behaviour at Football and Threatening Communications (Repeal)
(Scotland) Bill**

Note by the clerk

Introduction

1. James Kelly MSP introduced the Offensive Behaviour at Football and Threatening Communications (Repeal) (Scotland) Bill¹ in the Scottish Parliament on 21 June 2017. The Parliamentary Bureau designated the Justice Committee as lead committee for Stage 1 scrutiny of the Bill on 27 June 2017.
2. The Committee considered its overall approach to scrutiny of the Bill at Stage 1 at its meeting on 27 June 2017 and issued a call for evidence. The call for evidence closed on 18 August 2017. Responses are published on the Committee's [webpage](#).

Justice Committee consideration

3. At its meeting of 3 October 2017, the Committee heard from two panels of witnesses. The first panel was Police Scotland and the Crown Office and Procurator Fiscal Service (COPFS). The second panel comprised representatives of Fans Against Criminalisation, the Scottish Football Supporters Association and Supporters Direct Scotland.
4. At its meeting of 24 October, the Committee heard from representatives of BEMIS Scotland, Scottish Disabled Supporters' Association, Scottish Women's Convention, Stonewall Scotland and SACRO.
5. At its meeting of 7 November, the Committee took evidence from two panels of witnesses. The first panel comprised representatives of the Scottish Women's Convention, the Equality and Human Rights Commission, the Scottish Council of Jewish Communities, the Catholic Bishops' Conference of Scotland, and the Church of Scotland's Church & Society Council. The second panel comprised representatives of the Glasgow Bar Association and the Law Society of Scotland, and Professor Fiona Leverick, Professor of Criminal Law and Criminal Justice, University of Glasgow.
6. At its meeting of 14 November, the Committee took evidence from Dr Stuart Waiton, Senior Lecturer, Division of Sociology, School of Social and Health Sciences, University of Abertay Dundee; Andrew Tickell, Lecturer in Law, Glasgow Caledonian University; Dr Joseph Webster, Lecturer in

¹ <http://www.parliament.scot/parliamentarybusiness/Bills/105269.aspx>

Anthropology, Queen's University Belfast, and Dr John Kelly, Lecturer in Sport Policy, Management and International Development, University of Edinburgh.

7. At its meeting on 5 December, the Committee will take evidence from Annabelle Ewing MSP, Minister for Community Safety and Legal Affairs, and officials. The Committee's final evidence session on this Bill, where it will take evidence from the member in charge of the Bill, James Kelly MSP, will take place on 12 December. The Stage 1 deadline for the Bill is Friday 26 January 2017.
8. Official Reports of all meetings will be published on the Committee's [webpage](#).