

# Criminal Justice Committee

**2nd Meeting, 2024 (Session 6), Thursday, 11 January 2024**

## Subordinate legislation - Note by the clerk

### Purpose of the paper

1. This paper invites the Committee to consider the following negative instrument:
  - [The Firefighters' Pension Scheme \(Scotland\) Amendment Regulations 2023 \(SSI 2023/369\)](#) [see page 4];
2. The purpose of the instrument is to correct errors contained in the Public Service Pensions Revaluation Order 2021 and the Public Service Pensions Revaluation Order 2022, to ensure firefighters' pensions are revalued by the correct rate in respect of those two years.
3. If the Committee agrees to report to the Parliament on the instruments, it is required to do so by **29 January 2024**.

### Delegated Powers and Law Reform Committee Consideration

4. The Delegated Powers and Law Reform Committee considered the instrument at its meeting on 19 December 2023.
5. The DPLR Committee agreed that it did not need to draw the instrument to the attention of the Parliament on any grounds within its remit.

### Procedure for negative instruments

6. 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. The annulment process would require a motion to be agreed in the Chamber.
7. 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).

8. 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.
9. 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.
10. If the Parliament resolves to annul an SSI then what has been done under authority of the instrument remains valid but it can have no further legal effect. Following a resolution to annul an SSI the Scottish Ministers (or other responsible authority) must revoke the SSI (make another SSI which removes the original SSI from the statute book). Ministers are not prevented from making another instrument in the same terms and seeking to persuade the Parliament that the second instrument should not be annulled.
11. Each negative instrument appears on the Criminal 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.
12. 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**

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

<https://www.parliament.scot/chamber-and-committees/committees/current-and-previous-committees/session-6-delegated-powers-and-law-reform-committee>

## **Action**

14. **The Committee is invited to consider the instrument.**

**Clerks to the Committee  
January 2024**

## Policy Note

# The Firefighters' Pension Scheme (Scotland) Amendment Regulations 2023

## SSI 2023/369

The above instrument was made in exercise of the powers conferred by section 1 (1) and (2)(f) of, and paragraph 6 (c) of Schedule 2 of, the Public Service Pensions Act 2013 (the 2013 Act) and all the powers enabling them to do so. The instrument is subject to negative procedure.

## Summary Box

This instrument is to correct errors contained in the Public Service Pensions Revaluation Order 2021 (the 2021 Order) and the Public Service Pensions Revaluation Order 2022 (the 2022 Order), to ensure firefighters' pensions are revalued by the correct rate in respect of those two years.

## Policy Objectives

Accrued pensions of active members of the Firefighters' Pension Scheme in Scotland are revalued annually under the 2015 Scheme. The revaluation is in accordance with annual orders made by HM Treasury under section 9(2) of the Public Sector Pensions Act 2013. The increases provided for in the 2021 and 2022 Orders were based on provisional figures from November in each year, whereas in other years the calculations were based on final figures from December. HM Treasury considers that the December figures should have been used and this statutory instrument is making the necessary changes.

Amendments are required to the 2015 regulations to correct the errors in the 2021 Order and the 2022 Order by "topping up" the index adjustment. This is being achieved by increasing the pension entitlement for those individuals in scope under powers in Section 3 of the 2013 Act. This approach is necessary as making changes to the revaluation indexation would more rightly be made under section 9 to the 2013 Act, which falls outside the scope of the responsible authority's powers.

## EU Alignment Consideration

This instrument is not relevant to the Scottish Government's policy to maintain alignment with the EU.

## Consultation

To comply with the requirements of section 21 of the 2013 Act, a consultation took place from 6 October 2023 to 3 November 2023. In particular representatives of Firefighters' employers and employees, armed forces administration, other Scottish Government interests and UK Government departments were consulted. Two responses to the consultation were received, and on the basis of responses received the proposed to rectify the correction required to amend the errors in the 2021 and 2022 Orders is being adopted.

A full list of those consulted and who agreed to the release of this information is attached to the consultation report published on the Scottish Public Pensions Agency's website:

<https://pensions.gov.scot/firefighters/scheme-governance-and-legislation/consultations>

## Impact Assessments

This change is to rectify HMT Revaluation Orders in 2021 and 2022 which used incorrect information. Since both sets of data will increase pension values by the same proportion it is assessed an EQIA is not required.

## Financial Effects

The Minister for Community Wealth and Public Finance confirms that no Business and Regulatory Impact Assessment (BRIA) is necessary as the instrument has no significant financial effects on the Scottish Government, local government or on business.

Scottish Public Pensions Agency  
An Agency of the Scottish Government  
December 2023