

# Criminal Justice Committee

**10th Meeting, 2024 (Session 6), Wednesday, 6 March 2024**

## Subordinate legislation - Note by the clerk

### Purpose of the paper

1. This paper invites the Committee to consider the following negative instruments:
  - [The Firefighters' Pension Schemes \(Scotland\) Amendment Order 2024 \(SSI 2024/26\)](#) [see **Annex A**]
  - [The Sexual Offences Act 2003 \(Prescribed Police Stations\) \(Scotland\) Amendment Regulations 2024 \(SSI 2024/30\)](#) [see **Annex B**]
8. If the Committee agrees to report to the Parliament on the Firefighters' Pension Schemes (Scotland) Amendment Order 2024, it is required to do so by **11 March 2024**.
9. The reporting deadline for the Sexual Offences Act 2003 Prescribed Police Stations) (Scotland) Amendment Regulations 2024 is **18 March 2024**.

### Delegated Powers and Law Reform Committee Consideration

2. The Delegated Powers and Law Reform Committee considered both of the instruments at its meeting on 20 February 2024.
3. The DPLR Committee agreed that it did not need to draw the Sexual Offences Act 2003 (Prescribed Police Stations) (Scotland) Amendment Regulations 2024 to the attention of the Parliament on any grounds within its remit.
4. However, it highlighted a number of issues with the Firefighters' Pension Schemes (Scotland) Amendment Order 2024.
5. In its [report](#), the DPLR Committee draws the instrument to the attention of the Parliament on reporting ground (i), in that the instrument's drafting appears to be defective on the basis that the deadline date to apply for an additional death grant specified in new rule 1C(3), inserted by Article 4 of this instrument, is incorrect.

6. Whilst it acknowledges that the Scottish Government proposes to amend the instrument to correct the error at the next opportunity, and with retrospective effect if necessary, the DPLR Committee calls upon the Scottish Government to fix the error sooner rather than waiting until the next amending instrument.
7. The DPLR Committee also draws the instrument to the attention of the Parliament under the General reporting ground in that the Scottish Government's answer to the Committee's questions around the application deadline for additional death grants suggests late applications will be allowed, but no provision is made for this in the Order.
8. The DPLR Committee invites the Scottish Government to consider correcting this, along with the issue of the erroneous date.
9. The DPLR Committee also highlights its correspondence with the Scottish Government regarding the application deadline to the lead committee. This can be found in **Annex C**.
10. The relevant excerpts from the DPLR Committee's report can be found in **Annex D**.

## **Procedure for negative instruments**

10. 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.
11. 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).
12. 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.
13. 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.
14. 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.

15. 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.
16. 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**

17. 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**

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

**Clerks to the Committee  
March 2024**

# Annex A

## Policy Note

### The Firefighters' Pension Schemes (Scotland) Amendment Order 2024

#### SSI 2024/26

The above instrument was made in exercise of the powers conferred by section 26 (1), (2) and (5) of the Fire Services Act 1947 and section 34 (1), (2) and (4) of the Fire and Rescue Services Act 2004. The instrument is subject to *negative procedure*.

#### Summary Box

These provisions deliver further amendments to the New Firefighters' Pension Scheme (Scotland) set out in the Firefighters' Pensions Scheme (Scotland) Order 2007. The Order is amended to provide a cohort of retained firefighters with further options to purchase historic pensionable service. This mirrors changes being made to the equivalent firefighter schemes in the rest of the UK, as a result of case law.

#### Policy Objectives

In the employment tribunal case *Matthews v Kent and Medway Towns Fire Authority & others* <http://www.bailii.org/uk/cases/UKHL/2006/8.html>, the judgement reached held that firefighters employed on the Retained Duty System between 1 July 2000 and 5 April 2006 were permitted access to pension provisions with retrospective effect to 1 July 2000, in line with requirements of Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 (PTWR). In response, in 2014 the UK Government (and Scottish and Welsh Ministers in the equivalent devolved schemes) made changes to the relevant New Firefighters' Pension Schemes (NFPS) to introduce a category of "special membership" to allow eligible serving or former retained firefighters to purchase pensionable service for this period during an Options Exercise.

In Scotland, this exercise was undertaken by the Scottish Fire and Rescue Service with support from the Scottish Public Pensions Agency (SPPA). Special membership largely replicates the terms of the earlier Firefighters Pension Scheme 1992, from which this cohort had been historically excluded.

Subsequently, in a similar and long-running case brought by a fee-paid judge seeking equal treatment in the Judicial Pension Scheme, the European Court of Justice ruled in *O'Brien v Ministry of Justice* that equal treatment should extend beyond the date of the Part-time Workers Directive (which led to the PTWR) on 7 April 2000. This ruling has a read across to the *Matthews* case and the NFPS, and

means a second options exercise should be conducted. To deliver this, a Memorandum of Understanding (MoU) was drawn up in England in 2022 between the Home Office, the Local Government Association (representing English fire and rescue authorities) and the Fire Brigades Union. This MoU sets out the cohort that is in scope for the second options exercise, chiefly those retained firefighters who were in active service before or on 7 April 2000 with continuous service before and after that date. Neither Scottish Ministers nor the SFRS were party to the MoU, however following the precedent set in 2014 it is considered that introducing similar changes in Scotland is appropriate.

## **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 34(5) of the Fire and Rescue Services Act 2004, a consultation took place from 20 September 2023 to 6 November 2023.

In particular representatives of Firefighters' employers and employees other Scottish Government interests and UK Government departments were consulted. Three responses were received and on the basis of these responses the proposed amendments will be adopted.

A full list of those consulted and who agreed to the release of this information is attached to the consultation report which will be published on the Scottish Public Pensions Agency's website: <https://pensions.gov.scot/firefighters/scheme-governance-and-legislation/consultations>

## **Impact Assessments**

An equality impact summary statement has been produced rather than a full EQIA as the instrument is removing historical discrimination and equalising treatment as far as possible to retained firefighters, in comparison to regular firefighters. There was limited data from the first options exercise with the only protected characteristic available for comparison being age.

## **Financial Effects**

The *Minister for Community Wealth & Public Finance* confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Scottish Government  
Scottish Public Pensions Agency  
January 2024

## Annex B

### Policy Note

# The Sexual Offences Act 2003 (Prescribed Police Stations) (Scotland) Amendment Regulations 2024

## SSI 2024/30

The Sexual Offences Act 2003 (Prescribed Police Stations) (Scotland) Amendment Regulations 2024 (“the Amendment Regulations”) are made in exercise of the powers conferred by section 87(1)(a) of the Sexual Offences Act 2003 (“the 2003 Act”). The Amendment Regulations are subject to negative procedure.

These Regulations amend the list of police stations prescribed in the Sexual Offences Act 2003 (Prescribed Police Stations) (Scotland) Regulations 2017 at which notification requirements imposed on sex offenders can be discharged.

### Policy Objectives

1. In Scotland a sex offender becomes subject to the notification requirements of Part 2 of the 2003 Act if they are convicted, or have a finding made against them, in respect of an offence listed in Schedule 3 of the 2003 Act or have a civil preventative order (e.g. sexual harm prevention order) made against them which includes a requirement to comply with the notification requirements. Such offenders have to notify the police of their name and address, and certain other personal details within a specified period. The relevant information also requires to be updated periodically and where there is a change of circumstances.
2. Section 87(1) of the 2003 Act provides that a sex offender gives notification under sections 83(1), 84(1), or 85(1) of the 2003 Act by attending any police station which is prescribed for this purpose by regulations and giving an oral notification to any police officer, or to any person authorised for that purpose by the officer in charge of the station. The Sexual Offences Act 2003 (Prescribed Police Stations) (Scotland) Regulations 2017 (“the 2017 Regulations”) prescribe a list of police stations in Scotland at which a sex offender can attend to notify the police of their details. The 2017 Regulations came into force on 9<sup>th</sup> October 2017.
3. Section 87 of the 2003 Act empowers the police to take photographs, fingerprints and samples to verify the individual’s identity upon notification. Notification should therefore take place at a station where the necessary facilities are available.
4. The Amendment Regulations will **remove the entry for one prescribed police station on the current list, namely Tain Police Station**. The amendment required is due to this station no longer having the capacity to provide the facilities for sex offenders to register or update their details. It is proposed that registration of sex

offenders will take place at Alness Police Station, located 14 miles away from Tain Police Station and where most of the Easter Ross police staff are currently based. Alness Police Station is already contained in the list of prescribed police stations and individuals currently attend at this station to register their details, so the only action required is to remove Tain Police Station from Schedule 1 of the 2017 Regulations.

## **EU Alignment Consideration**

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

## **Consultation**

6. Police Scotland were consulted on the 2017 Regulations and provided the Scottish Government with details of the present change, enabling drafting of the Amendment Regulations. Additionally, the local councillor for Tain has been informed of this operational change and no objections have been raised. Police Scotland is clear that the revised list delivers the required geographical coverage across Scotland to allow those individuals who are subject to the notification requirements under the 2003 Act to comply with the said requirements.

## **Impact Assessments**

7. The impact of the Amendment Regulations will be purely administrative for Police Scotland. There may also be a small impact on certain individuals in terms of having to travel further distances to register – however, as there is an alternative station within 14 miles that may mitigate that impact. However there will be no overall impact on businesses, equalities or strategic environment, therefore no impact assessments have been carried out.

## **Financial Effects**

8. We can confirm that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Scottish Government  
Directorate for Justice  
*January 2024*

## Annex C

# DPLR Committee's correspondence with the Scottish Government

### Firefighters' Pension Schemes (Scotland) Amendment Order 2024 (SSI 2024/26)

On Friday 2 February 2024, the DPLR Committee asked the Scottish Government Article 4 of the instrument introduces a new Rule 1C in Part 5 schedule 1 to the Firefighters' Pension Scheme (Scotland) Order 2007, making provision about an additional death grant. The rule will apply when three conditions are met, and those conditions are set out at Rule 1C(1)(a)-(c). The condition at (c) states that the person is to have died "before 31 March 2025 and without making an election under rule 6A of Part 11 in respect of their service during the extended limited period following an application under rule 5B of Part 11 (purchase of service during the extended limited period).

1. Rule 1C(2) states that "where a deceased was married, or a member of a civil partnership, at the time of death, their spouse or civil partner may apply in writing to the authority for a death grant and any such application must be made on or before 31 March 2025". Is it the result that those firefighters who die close to, or on the date of 31 March 2025 will not be entitled to the additional death grant, unless their spouse or civil partner is able to make an application before 31 March 2025? If so, is that the policy intention?

2. Rule 1C(3) states that "where the deceased was not married, or a member of a civil partnership, at the time of the deceased's death, a child of the deceased may apply in writing to the authority for a death grant and any such application must be made on or before 30 September 2024". Is it the result that the children of those firefighters who die between 30 September 2024 and 31 March 2025 are not eligible to make such an application? If so, is that the policy intention?

Please confirm whether any corrective action is proposed, and if so, what action and when.

On Wednesday 7 February 2024, the Scottish Government responded:

1. There could potentially be cases where spouses or civil partners of deceased firefighters who die on or close to 31 March 2025 may have insufficient time to apply for a death grant within the specified period. It is envisaged that there are likely to be very few, if any, cases where these circumstances apply. While there is a requirement to specify a cut-off date for death grant applications, the policy intention is that spouses or civil partners in these circumstances would be entitled to a death grant, and in the event of any such cases arising, appropriate action will be considered.

2. The date referred to in Rule 1C(3) should be 31 March 2025. This error is



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regretted. The policy intention is that children of deceased members in these circumstances should be entitled to apply for a death grant on a similar basis to spouses or civil partners. It is envisaged that there may be few, if any, cases where these circumstances apply, but corrective provision will be made in the next amending instrument, if necessary with retrospective effect under section 34(3) of the Fire and Rescue Services Act 2004.

3. Corrective action in the next amending instrument is proposed in relation to Rule 1C(3), as detailed above.

## Annex D

# Excerpt from the DPLR Committee's 12<sup>th</sup> Report, 2024

### **Firefighters' Pension Schemes (Scotland) Amendment Order 2024 (SSI 2024/26)**

This instrument amends the Firemen's Pension Scheme Order 1992 and the Firefighters' Pension Scheme (Scotland) Order 2007 in order to extend the period during which persons who were employed in Scotland as retained firefighters have access to a pension scheme.

The Firefighters' Pension Scheme (Scotland) Amendment (No. 2) Order 2014 amended the 2007 Order, to provide retained firefighters who were employed in Scotland during the period from 1st July 2000 to 5th April 2006 with access to a pension scheme for that period. This Order extends that period so that it commences on 7th April 2000.

The Order states at Rule 1C(3) that "where the deceased was not married, or a member of a civil partnership, at the time of the deceased's death, a child of the deceased may apply in writing to the authority for a death grant and any such application must be made on or before 30 September 2024".

Elsewhere in the Order, the date 31 March 2025 is given for similar eligibility for civil partners and spouses. The effect is that the application scheme is not available to those who are intended to be eligible, where the parent died after 30 September 2024 and before 31 March 2025.

In [correspondence](#), the Scottish Government confirmed that it is an error and proposes to correct this "in the next amending instrument".

**The DPLR Committee draws the instrument to the attention of the Parliament on reporting ground (i), in that the instrument's drafting appears to be defective on the basis that the date specified in new rule 1C(3), inserted by Article 4 of this instrument, is incorrect.**

**Whilst it acknowledges that the Scottish Government proposes to amend the instrument to correct the error at the next opportunity, and with retrospective effect if necessary, the DPLR Committee calls upon the Scottish Government to fix the error sooner rather than waiting until the next amending instrument.**

Also in relation to this instrument, the [DPLR Committee asked the Scottish Government](#) what would happen if an eligible spouse, civil partner or child of a firefighter who died close to or on 31 March 2025 did not make their application before this date.

The [Scottish Government confirmed](#) it is the intention that 31 March 2025 is specified as the deadline for applications, but it is also the intention that eligible spouses, civil partners or children will be entitled to the grant if they miss the deadline. However, late applications are not provided for by the Order as amended.

**The DPLR Committee draws the instrument to the attention of the Parliament under the General reporting ground in that the Scottish Government's answer suggests late applications will be allowed, but no provision is made for this in the Order.**

**The DPLR Committee invites the Scottish Government to consider correcting this, along with the issue of the erroneous date.**

**The Committee also highlights its correspondence with the Scottish Government regarding the application deadline to the lead committee.**