

Criminal Justice Committee

**14th Meeting, 2022 (Session 6), Wednesday,
20 April 2022**

Subordinate legislation

Note by the clerk

Purpose of the paper

1. This paper invites the Committee to consider the following negative instrument:
 - [The Firemen's Pension Scheme \(Amendment\) \(Scotland\) Order 2022](#) (SSI 2022/79) [see **Annexe A**];
 - [The Police Pensions \(Commutation\) Amendment \(Scotland\) Regulations 2022](#) (SSI 2022/80) [see **Annexe B**]
2. If the Committee agrees to report to the Parliament on the instruments, it is required to do so by **27 April 2022**.

Delegated Powers and Law Reform Committee Consideration

3. The Delegated Powers and Law Reform Committee considered both of the instruments at its meeting on 15 March 2022.
4. The DPLR Committee agreed that it did not need to draw the instruments to the attention of the Parliament on any grounds within its remit.

Procedure for negative instruments

5. 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.

6. 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).
7. 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.
8. 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.
9. 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.
10. 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.
11. 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

12. 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>

- 13. The Committee is invited to consider the instruments.**

Clerks to the Committee
14 April 2022

Annexe A

Policy Note

The Firemen's Pension Scheme (Amendment) (Scotland) Order 2022

SSI 2022/79

The above instrument was made in exercise of the powers conferred by section 26 of the Fire Services Act 1947 and section 12 of the Superannuation Act 1972. Functions under that Act as regards Scotland have been executively devolved to the Scottish Ministers. The instrument is subject to negative procedure.

The purpose of this instrument is to amend the provision for commutation of pension in the Firemen's Pension Scheme (Scotland) 1992.

Policy Objectives

This issue relates to the Firefighters' Pension Scheme 1992 (FPS), set out in the above Order, which was closed to new members on 5 April 2006. Currently under regulation B7, members who retire with entitlement to an ordinary pension and who have reached their normal pension age (55) or have accrued at least 30 years' service may commute up to one quarter of their pension for a lump sum. In all other circumstances, the amount that a member with entitlement to an ordinary pension may commute is limited under rule B7 (5) and may not exceed 2.25 times the amount of pension.

A member may retire if they are aged 50 or over and have 25 or more years' service. However, as the commutation limit is likely to apply in these circumstances, should they commute the pension then the lump sum is restricted. This provision dates back to revoked inland revenue legislation.

Lump sum payments are actuarially neutral, meaning the retirement lump sum is the equivalent value of the pension being commuted. The Government Actuary's Department provides the actuarially-neutral factors which are used in the calculation of lump sums. Up until 2012, factors for lump sums in the FPS were calculated using data solely from England, due to a lack of specific data from Scotland being available. However, more detailed and robust data on Scotland was available from 2012.

Due to increased mortality rates in Scotland amongst normal aged pensioners, Scottish factors were lower, which would consequently lead to lower lump sums. Considering the impact of pension reform and the principle of protection, Scottish Ministers decided in 2014 to implement an underpin ensuring that the higher of either the English or Scottish factors are applied to the lump sum at retirement. This underpin was due to end on 31 March 2022.

CJ/S6/22/14/4

This instrument makes amendments to the existing provision for commutation in FPS to:

- Remove the limit on commutation of pension for members who are below normal pension age and have less than 30 years' service but are entitled to an ordinary pension (aged 50 with 25 years' service)
- Remove the end date for the underpin to commutation factors in England, where they are higher, so that the underpin continues indefinitely

Consultation

A formal consultation was undertaken from 24 December 2021 to 1 February 2022. All stakeholders were consulted including the Fire Brigades Union, Fire Officers Association and relevant Scottish and UK Government departments. A summary of consultation responses can be found on the Scottish Public Pensions Agency Website.

Impact Assessments

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.

The equality impact assessment has been completed and will be made available on the SPPA website in due course. No impact is expected.

Financial Effects

The changes provided by this instrument will not have a material impact on the costs of the scheme, which is subject to quadrennial valuations that taken into account the cost of scheme provisions.

Scottish Public Pensions Agency
An Agency of the Scottish Government
1 March 2022

Annexe B

Policy Note

The Police Pensions (Commutation) Amendment (Scotland) Regulations 2022

SSI 2022/80

The above instrument was made in exercise of the powers conferred by section 1 of the Police Pensions Act 1976. Functions under that Act as regards Scotland have been executively devolved to the Scottish Ministers. The instrument is subject to negative procedure.

The purpose of this instrument is to amend the provisions for commutation of pension in the Police Pensions Regulations 1987.

Policy Objectives

This issue relates to the Police Pension Scheme 1987 (PPS) which was closed to new members from April 2006. Currently under regulation B7, members retiring with entitlement to an ordinary pension and who have reached their voluntary retirement age or have accrued at least 30 years' service may commute up to one quarter of their pension for a lump sum. In all other circumstances, the amount that a member may commute is limited under rule B7 (4)(b) and may not exceed 2.25 times the amount of pension.

A member may retire if they are aged 50 or over and have 25 or more years' service. However, as the commutation limit is likely to apply in these circumstances, should they commute the pension the lump sum is restricted. This provision dates back to revoked Inland Revenue legislation.

Lump sum payments are actuarially neutral, meaning the retirement lump sum is the equivalent value of the amount of pension being commuted. The Government Actuary's Department provides the actuarially-neutral factors which are used in the calculation of lump sums. Up until 2012, factors for lump sums in the Scottish Police Pension Scheme were calculated using data solely from England and Wales, due to a lack of specific data from Scotland being available. However, more detailed and robust data on Scotland was available from 2012.

Due to increased mortality rates in Scotland amongst normal aged pensioners, Scottish factors were lower, which would consequently lead to lower lump sums. Considering the impact of pension reform and the principle of protection, Scottish Ministers decided in 2014 to implement an underpin ensuring that the higher of either the England and Wales or Scottish factors are applied to the lump sum at retirement. This underpin was due to end on 31 March 2022.

The regulations make amendments to the existing provision for commutation in PPS to:

- Remove the limit on commutation of pension for members who are below voluntary retirement age and have less than 30 years' service but are entitled to an ordinary pension (aged 50 with 25 years' service)
- Remove the end date for the underpin to commutation factors in England and Wales, where they are higher, so that the underpin continues indefinitely

Consultation

Following discussion on the policy objectives at the Scottish Police Pension Scheme Advisory Board, a formal consultation was undertaken from 24 December 2021 to 1 February 2022. The consultation was issued to representatives of police officers, employers and relevant Scottish and UK Government departments. A summary of consultation responses can be found on the Scottish Public Pensions Agency Website.

Impact Assessments

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.

An Equality Impact Assessment has been completed and will appear on the SPPA website at: www.pensions.gov.scot.

Financial Effects

The changes provided by this instrument will not have a material impact on the costs of the scheme, which is subject to quadrennial valuations that take into account the commutation provision.

Scottish Public Pensions Agency
An Agency of the Scottish Government
01 March 2022